



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, MNRT, RR, RP, LRE, FFT

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the “Act”) for the following orders:

1. cancellation of the 10-Day Notice to End Tenancy for Unpaid Rent (the 10-Day Notice”);
2. a monetary order for the cost of emergency repairs to the rental unit pursuant to sections 33 and 67 of the Act;
3. an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to sections 27 and 65;
4. an order for the landlord to make repairs to the rental unit pursuant to sections 32 and 62;
5. an order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70(1); and,
6. authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

LJ and MM (the “landlords”) appeared at the hearing. JM (the “tenant”) appeared at the hearing.

As both parties were in attendance, I confirmed that there were no issues with service of the Notice of Dispute Resolution Proceeding package and evidence. In accordance with sections 88 and 89 of the Act, I find that both parties were served with the other’s application materials.

The parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11. The parties were given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

The tenant applied for several orders in addition to cancellation of the 10-Day Notice. Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that claims made in an application must be related to each other and authorizes that an Arbitrator may dismiss unrelated claims with or without leave to reapply. Rule 6.2 provides that the Arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3. It states: “. . . if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.”

As I stated to the parties in the hearing, I find the most important issue to determine is whether or not the 10-Day Notice should be cancelled. I find the tenant's additional claims are unrelated to this issue. Therefore, I dismiss the tenant's additional claims with leave to reapply.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled?
If not, is the landlord entitled to an Order of Possession?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

LJ testified that they served the tenant with the 10-Day Notice on March 16, 2023, by email. LJ testified that she sent the 10-Day Notice using Adobe Scan. LJ testified that the parties used email for all correspondence throughout the tenancy. When questioned, LJ conceded that there is no agreement between the parties to serve documents by email.

The tenant testified that they received an email from the landlord on March 16th, 2023, containing a link. The tenant testified that the link led to an illegible document. The tenant testified that they have not viewed nor are they aware of the contents of the document; however, they were aware it was a 10-Day Notice and applied to cancel it. The tenant is disputing service of the 10-Day Notice.

Analysis

Section 88 of the Act requires that all documents, other than those referred to in section 89, that are required or permitted under this Act to be given to or served on a person must be given or served in one of the allowable methods listed in section 88 of the Act. Email service is not included as an allowable method of service in this section, unless stipulated by Regulation 43(1).

Regulation 43(1) states:

For the purposes of section 88 (j) [*how to give or serve documents generally*] of the Act, the documents described in section 88 of the Act may be given to or served on a person by emailing a copy to an email address provided as an address for service by the person.

The uncontested evidence of the parties is that the tenant did not provide an email address for service. Furthermore, the tenant disputes that they were able to view a legible document via the link include in the email. I find that the landlords have not provided sufficient evidence to rebut the tenant's claim on this point.

Based on the foregoing, I find the tenant was not served in accordance with section 88 of the Act or with Regulation 43(1). As a result, I find in favour of the tenant and cancel the 10-Day Notice issued March 16, 2023.

As the tenant was successful in this application, I find that they are entitled to recover the filing fee for this application from the landlord. In accordance with the off-setting provisions of section 72 of the Act, I order that the tenant may withhold \$100 from ONE future payment of rent. However, given that the parties expect the tenancy to end in a short time, I also grant a Monetary Order in favour of the tenant in the amount of \$100.00. Should the tenant withhold \$100.00 from a future payment of rent, the Monetary Order is cancelled and of no force or effect.

Conclusion

I order that the Notice is cancelled and of no force or effect. The tenancy shall continue until such time as it is ended in accordance with the Act.

I issue a Monetary Order in the tenant's favour in the amount of \$100.00.

The landlord must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 20, 2023

Residential Tenancy Branch