



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, OLC

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 46 cancelling a 10-Day Notice to End Tenancy (the “10-Day Notice”); and
- an order pursuant to s. 62 that the landlord comply with the *Act*, Regulations, and/or the tenancy agreement.

V.G. appeared as the Tenant. The Landlord did not attend the hearing, nor did someone attend on their behalf.

The Tenant affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Tenant advises that the Notice of Dispute Resolution was served on the Landlord via registered mail sent on March 13, 2023. I am provided with a registered mail tracking receipt as proof of service by the Tenant. I find that the Tenant served the Notice of Dispute Resolution in accordance with s. 89 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Notice of Dispute Resolution was received by the Landlord on March 18, 2023.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Landlord did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure. It concluded at 9:42 AM without participation of the Landlord.

Cancellation of the 10-Day Notice

Pursuant to s. 46(1) of the *Act*, where a tenant fails to pay rent when it is due, a landlord may elect to end the tenancy by issuing a notice to end tenancy that is effective no sooner than 10-days after it is received by the tenant. If a tenant files to dispute the notice, the burden of proving it was issued in compliance with s. 46 of the *Act* rests with the respondent landlord. In this instance, the Tenant tells me the 10-Day Notice was signed on February 22, 2023.

In this instance, the Landlord failed to attend the hearing to provide submissions and adduce evidence. I find that by failing to do so, the Landlord has failed to discharge their evidentiary burden to prove the 10-Day Notice was issued in compliance with the *Act*. Accordingly, I grant the Tenant's application and cancel the 10-Day Notice, which is of no force or effect. The tenancy shall continue until it is ended in accordance with the *Act*.

Issue to be Decided

- 1) Should the Landlord be ordered to comply with the *Act*, Regulations, or the tenancy agreement?

Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The Tenant confirmed the following details with respect to the tenancy:

- The Tenant moved into the rental unit in September 2021.
- Rent of \$1,500.00 is due on the first of each month.

I am not provided with a copy of the tenancy agreement by the Tenant. The Tenant advises that under the tenancy agreement entered into in September 2021 rent included utilities. The Tenant testifies that the Landlord changed their property manager recently and that she received a demand in February 2023 that she pay utilities prospective.

The Tenant seeks an order that the Landlord comply with the tenancy agreement, namely that rent include utility payments. I accept the Tenants undisputed evidence that

her tenancy agreement specifies that rent is included in rent. I note that it is not permissible to alter the terms of the tenancy agreement without written consent of both parties as per standard term 1(2) as set out in the Schedule of the Regulation. The standard terms apply to all tenancy agreements as set out by s. 12 of the *Act*.

Accordingly, I order that the Landlord comply with the tenancy agreement and not demand payment of utilities. The tenancy agreement, as entered into by the parties in September 2021, is the one that applies until it is altered or amended by the parties.

Conclusion

The 10-Day Notice is cancelled and is of no force or effect. The tenancy shall continue until ended in accordance with the *Act*.

The Landlord is ordered pursuant to s. 62 of the *Act* to comply with the September 2021 tenancy agreement and not seek demand of utilities, which are included in rent.

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 05, 2023

Residential Tenancy Branch