



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR OLC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. The participatory hearing was held, via teleconference, on April 13, 2023. The Tenants applied for multiple remedies under the *Residential Tenancy Act* (the "Act").

Both parties attended the hearing and provided affirmed testimony. Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The Landlord confirmed receipt of the Tenants' Notice of Dispute Resolution Proceeding and evidence packages, and no service issues were raised. The Landlord did not provide any documentary evidence.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Issues

The Tenants are seeking multiple remedies under multiple sections of the *Act*, a number of which were not sufficiently related to one another. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues applied for, and based on the evidence before me, I find the most pressing and related issues in this application are related to the payment/non-payment of rent/utilities and the 10 day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice). As a result, I exercise my discretion to dismiss, with leave to reapply, all of the grounds in the application with the exception of the following grounds:

- I want to dispute a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities

Issues to be Decided

- Should the 10 Day Notice to End Tenancy be cancelled?
 - If not, is the landlord entitled to an Order of Possession or a monetary order for unpaid rent?

Background and Evidence

As per the Tenant's application, monthly rent is \$1,863.00, due on the first of the month. The parties both agree that the Tenants are responsible for paying 65% of the monthly electricity bill, which was the source of the issue in this application.

The Tenants provided a copy of the Notice into evidence which indicates that there was \$1,135.81 in unpaid utility amounts following a written demand on December 1, 2022.

The Tenants acknowledge receipt of the Notice on December 2, 2022.

The Landlord indicated that since the Notice was issued, the Tenants have paid their outstanding utility amounts owing, despite some initial confusion and dysfunction. The outstanding utility amounts were not paid until sometime in early 2023 but the Landlord stated that he is not seeking to end the tenancy and does not need an order of possession, nor does he need a monetary order, since the amount has been paid. The Landlord agreed to withdraw and cancel the Notice issued in December 2022

Analysis

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46 of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution.

The Landlord has agreed to withdraw the Notice, and he was not seeking an order of possession, or a monetary order, pursuant to the Notice as part of this proceeding. The Tenants did not object to the cancellation of the Notice. As such, I hereby cancel the Notice from December 2022, and I find it is of no force or effect. I decline to issue any monetary order or order of possession, pursuant to the December Notice.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. This is a discretionary award. Since the Notice was cancelled and the tenancy continues, which is what the Tenants applied for, I award the Tenants \$100.00, which is the filing fee they paid. The Tenants may deduct this amount from one future rent payment.

Conclusion

The Notice from December 2022, is cancelled and set aside.

The tenancy will continue until ended in accordance with the Act.

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 18, 2023

Residential Tenancy Branch