



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, LRE, OLC

Introduction

The tenant applied on March 17, 2023 for:

- (i) an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to section 46(4)(b) of the *Residential Tenancy Act* (the “Act”);
- (ii) an order for the landlord’s right of entry to be suspended under section 70 of the Act; and
- (iii) an order for the landlord to comply with the Act under section 62 of the Act.

Preliminary Issue - Unrelated Claims

Rules of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims.

It is my determination that the tenant’s claim regarding the Notice is not sufficiently related to the tenant’s other claims to warrant that they be heard together. I exercise my discretion to dismiss the tenant’s other claims with leave to reapply and will deal only with the Notice.

Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?

Background and Evidence

In reaching this decision, I have considered all relevant evidence that complied with the *Rules of Procedure*. Only the necessary oral and documentary evidence that helped resolve the issues of the dispute and explain the decision is included below.

The tenancy began November 1, 2009. The landlord currently retains a \$325.00 security deposit.

The landlord served the Notice on March 15, 2023 by delivering to the tenant in person, who was there to receive it.

The landlord affirmed that:

- the tenant's rent, which amounts to \$698.83 per month, is paid directly by the Ministry of Housing. The tenant is up to date with the tenant's portion of the rent.
- the tenant's mother ("MD") moved into the rental unit without informing the landlord. When the landlord found out, the landlord started charging MD an additional \$280.00 per month as rent.
- while there was no written agreement with the tenant that MD would be added as an additional tenant, the fact that MD has had a history of paying the additional \$280.00 per month shows there was an oral agreement for this.
- MD has been missing her portion of the rent recently.

The tenant affirmed that:

- the tenant did not agree to add MD as an additional tenant.
- the tenant understands the rent to be \$698.83, which is the amount the tenant has been paying every month.

MD affirmed that MD made a separate agreement to pay an additional \$280.00 per month as rent directly with the landlord, which did not involve the tenant.

Analysis

Section 26 of the Act requires tenants to pay rent the day it is due unless they have a legal right to withhold rent. Section 46(1) of the Act allows landlords to end a tenancy with a *10 Day Notice to End Tenancy for Unpaid Rent* on any day rent remains unpaid following the day rent is due.

Based on the parties' evidence, I am not convinced that there was any unpaid rent owing from the tenant for the following reasons:

- The tenant's evidence is that the tenant did not agree to add MD as an additional tenant.
- While the landlord claims there was an oral agreement to add MD as an additional tenant, the only evidence the landlord could point to is the fact that MD had a history of separately paying the additional \$280.00 per month. However, the fact that the tenant and MD pay the landlord separately actually supports the tenant's assertion that there was a separate agreement between MD and the landlord not involving the tenant.
- The landlord's evidence shows that the tenant has been up to date with the tenant's portion of the rent.

For the reasons outlined above, I find that the tenancy is only between the tenant and the landlord for the monthly rent of \$698.83. As the tenant is up to date on rent, I am cancelling the Notice.

Conclusion

The application is granted and the tenancy shall continue until it is 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: May 17, 2023

Residential Tenancy Branch