



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, MNDCT, OLC

Introduction

This hearing dealt with the tenant's application pursuant to the Residential Tenancy Act (the "Act") to:

- cancel the 10-Day Notice for Unpaid Rent (the "Notice") pursuant to section 46;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and,
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

XW appeared as agent for the tenant.

The tenant's agent provided affirmed testimony that they served the landlord with the Notice of Dispute Resolution Proceeding and evidence package on April 7, 2023, in person. Included in the tenant's evidence is a Proof of Service Document indicating the same.

Based on the affirmed testimony and evidence of the tenant and based on sections 89 of the Act, I find that the required documents were served on the landlord on April 7, 2023.

The tenant's agent was given full opportunity under oath to be heard, to present evidence and to make submissions.

The landlord did not appear at the hearing. The hearing proceeded in the landlord's absence pursuant to Rule of Procedure 7.3.

Preliminary Matter

The tenant applied for a monetary order pursuant to section 67 of the Act and an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62 of the Act 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 claims pursuant to section 67 and 62 of the Act are unrelated to the main issue. I have addressed my findings regarding the tenant's additional claims below under the heading “Conclusion”.

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 tenant's agent, not all of the details of their submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

I have reviewed the Tenancy Agreement submitted into evidence by the tenant. According to the Tenancy Agreement, the tenancy commenced on November 25, 2023. Rent is \$7,000.00 a month. The tenant paid a security deposit of \$3,500.00 and a pet deposit of \$3,500.00.

The tenant's agent testified that they are seeking cancellation of the 10-Day Notice.

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. In most circumstances the onus is on the person making the application. However, in some situations the Arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Based on the above, in this case, the onus is on the landlord to prove on a balance of probabilities that the tenancy should be ended for the reason identified on the 10-Day Notice.

However, the landlord did not appear at the hearing to make submissions or present evidence. On that basis, I find the landlord has not met the burden upon them to prove the reason that the tenancy should be ended. Therefore, I find in favour of the tenant and order that the 10-Day Notice is cancelled.

Conclusion

The tenant's additional claims pursuant to section 67 and 62 of the Act are dismissed with leave to reapply.

For the reasons outlined above, I grant the tenant's application for cancellation of the 10-Day Notice. The tenancy will continue until such time as 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 09, 2023

Residential Tenancy Branch