



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, RR, RP, AS, OLC, FFT

Introduction

The Tenant applied for dispute resolution (“Application”) and seeks the following:

- an order canceling 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”);
- to reduce rent for repairs, services or facilities agreed upon but not provided under section 65 of the Act;
- an order for repairs to be made to the rental unit under section 32 of the Act;
- an order permitting the Tenant to sublet the rental unit under section 65 of the Act;
- for the Landlord to comply with the Act, Residential Tenancy Regulation (the “Regulation”) or the tenancy agreement under section 62 of the Act; and
- to recover the cost of the filing fee under section 72 of the Act.

One of the Respondent Landlords, E.S., called into this teleconference at the date and time set for the hearing of this matter. The Landlord affirmed to tell the truth during the hearing and was given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

The Landlord confirmed that the Tenant’s Notice of Dispute Resolution Package (the “Materials”) were served to them via email on April 12 or 13, 2023. Email was not a method of service agreed upon by the parties, though they frequently communicated via this method. As the Landlord confirmed receipt of the Tenant’s Materials, I find that the Tenant’s Materials were sufficiently served, pursuant to section 71(2)(c) of the Act.

Although I waited until 1:41 P.M. to enable the Applicant Tenant to connect with this teleconference hearing scheduled for 1:30 P.M., the Tenant did not attend.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. During the hearing, I also confirmed from the online teleconference system that the Landlord and I were the only parties who had called into this teleconference.

Rule 7.1 of the *Rules of Procedure* states that a hearing will commence at the scheduled time, unless otherwise set by the Arbitrator.

Rule 7.3 of the *Rules of Procedure* states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the hearing in the absence of that party or dismiss the application with or without leave to reapply.

Accordingly, in the absence of any attendance at this hearing by the Tenant, I dismiss the Tenant's Application without leave to reapply.

Analysis

Section 55(1) of the Act states that if a tenant applies for Dispute Resolution to dispute a landlord's notice to end tenancy, an Order of Possession must be granted if the tenant's application is dismissed and the landlord's notice complies with the form and content requirements set out in section 52 of the Act.

A copy of the Notice was entered into evidence by both parties. I find that the Notice complies with section 52 of the Act.

Based on the above findings, the Landlords are entitled to an Order of Possession under section 55(1) of the Act, however, during the hearing E.S. confirmed that the Tenant had vacated the rental unit on April 27, 2023 and an Order of Possession was no longer sought. As such, an Order of Possession shall not be issued.

Since the Application relates to a section 46 notice to end tenancy, I must consider if the Landlords are entitled to an order for unpaid rent under section 55(1.1) of the Act. The Notice does not provide any unpaid rent, only unpaid utilities.

Section 46(6) of the Act states that if a tenancy agreement requires the tenant to pay utilities to the landlord and if the utilities go unpaid for more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utilities as unpaid rent and may give the tenant a Notice to End Tenancy.

Based on the undisputed testimony from the Landlord, I find that the written demand for payment of the utilities referenced on the Notice was sent from the Landlord to the Tenant on April 5, 2023 and that the Notice was issued on April 7, 2023 which is within 30 days after the written demand for utilities was made.

As a period of more than 30 days had not elapsed between the written demand for utilities and the Notice being issued, I find the Landlords are not entitled to a Monetary Order for unpaid utilities under the Notice.

As the Tenant's Application was not successful they must bear the cost of the filing fee.

Conclusion

The Application is dismissed without leave to reapply.

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

Dated: May 16, 2023

Residential Tenancy Branch