



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, LRE, LAT

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenants on February 5, 2023, under the *Residential Tenancy Act* (the Act), seeking:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice);
- An order suspending or setting conditions on the Landlord's right to enter the rental unit; and
- Authorization to change the locks.

The hearing was convened by telephone conference call at 11:00 am on June 1, 2023, and was attended by the Tenants, both of whom provided affirmed testimony. The Landlord did not attend. The Tenants were provided the opportunity to present their evidence orally and in written and documentary form, to call witnesses, and to make submissions at the hearing.

The Tenants were advised that interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The Tenants were asked to refrain from speaking over me and to hold their questions and responses until it was their opportunity to speak. The Tenants were also advised that recordings of the proceedings are prohibited, and confirmed that they were not recording the proceedings.

The Tenants testified that the Notice of Dispute Resolution Proceeding (NODRP), which contains a copy of the Application and the Notice of Hearing, along with their

documentary evidence, was sent to the office address for the Landlord by registered mail February 9, 2023. The Tenants stated that they obtained this address from google and it is the same address where they first met the Landlord or their agent. As a result, and in the absence of any evidence or testimony to the contrary, I find that the Landlord was deemed served with the NODRP on February 14, 2023. Residential Tenancy Branch (Branch) records show that the NODRP was emailed to the Tenants on February 8, 2023. I therefore find that the Tenants complied with section 59(3) of the Act and rule 3.1 of the Rules of Procedure. The hearing therefore proceeded in the absence of the Landlord or an agent acting on their behalf pursuant to rule 7.3 of the Rules of procedure.

Preliminary Matters

In their Application the Tenants sought remedies under multiple unrelated sections of the Act. 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.

As the Tenants applied to cancel a 10 Day Notice, I find that the priority claim relates to whether the tenancy will continue or end and the payment of rent. As the other claims are not sufficiently related to the 10 Day Notice or the payment of rent, I exercise my discretion to dismiss the following claims by the Tenants with leave to reapply:

- An order suspending or setting conditions on the Landlord's right to enter the rental unit; and
- Authorization to change the locks.

As a result, the hearing proceeded based only on the Tenants' Application seeking cancellation of the 10 Day Notice.

Issue(s) to be Decided

Are the Tenants entitled to cancellation of the 10 Day Notice?

Background and Evidence

The Tenants stated that they have a verbal tenancy agreement with the Landlord for a tenancy commencing approximately one year ago. The Tenants stated that \$2,000.00 in rent is due on the first day of each month, that they are responsible for 60% of the

utilities, as the occupants of the lower unit are responsible for the other 40%, and that they paid a \$1,000.00 security deposit to the Landlord.

The Tenants stated that they are still in the rental unit and have been paying rent as required. Although the Tenants acknowledged that they have not been served with a 10 Day Notice under the Act, they stated that the Landlord verbally told them on February 5, 2023, that they had three days to vacate.

Analysis

Based on the affirmed testimony of the Tenants, I am satisfied that a tenancy to which the Act applies exists between the parties. As the Tenants acknowledged that they were not served with a 10 Day Notice under section 46 of the Act, I therefore dismiss their Application seeking cancellation of a 10 Day Notice without leave to reapply, as I cannot cancel a notice that does not exist. I therefore order that the tenancy continue in full force and effect until it is ended by the Landlord or the Tenant(s) in accordance with the Act, as verbal notices to end tenancy do not constitute a proper notice to end tenancy under the Act.

Conclusion

The Tenants' Application seeking cancellation of a non-existent 10 Day Notice is dismissed without leave to reapply.

I order that the tenancy continue in full force and effect until it is ended by the Landlord or the Tenant(s) in accordance with the Act.

This decision is made on authority delegated to me by the Director of the Branch under Section 9.1(1) of the Act.

Dated: June 1, 2023

Residential Tenancy Branch