



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP, PSF

Introduction

This hearing was convened by way of conference call in response to the tenants' application for an Order to cancel a 10 Day Notice to End Tenancy for unpaid rent or utilities; for an Order for the landlord to make emergency repairs for health or safety reasons, and to Order the landlord to provide services or facilities required by law.

The tenant gave sworn testimony that service of the hearing documents, by the tenants to the landlord, was done in accordance with section 89 of the *Act*; served by registered mail on October 25, 2016. Canada Post tracking numbers were not provided by the tenants in documentary evidence. Based on the tenant's sworn testimony the landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant AL appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Preliminary Issues

RTB Rules of Procedure 2.3 states that “if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply.” In this regard I find that not all the claims on the tenant’s application are sufficiently related to the main issue to be dealt with together. I therefore will deal with the tenant’s application to cancel the 10 Day Notice to End Tenancy and I will not deal with the remaining sections of the tenants’ claim at this hearing.

Issue(s) to be Decided

Are the tenants entitled to have the 10 Day Notice to End Tenancy cancelled?

Background and Evidence

AL testified that her month to month tenancy started on April 12, 2012. Her rent is \$400.00 per month due on the 1st of each month. AL’s son started to live in the unit around three years later and has a separate agreement with the landlord and his rent is \$200.00 per month. The landlord is AL’s father.

AL testified that the landlord served the tenants with a 10 Day Notice to End Tenancy for unpaid rent or utilities (the Notice) on October 18, 2016 by registered mail. AL testified that the Notice states that there is outstanding rent for October of \$600.00. AL testified that the rent for October had been paid on September 23, 2016 and was paid directly into the landlord’s bank. The tenant referred to the receipt from the bank showing a payment of \$600.00 was made on that date.

AL testified that therefore at the time the 10 Day Notice was issued and served upon the tenants the rent for October had already been paid and therefore the Notice has no effect and should be cancelled.

Analysis

The landlord did not appear at the hearing to dispute the tenants' claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the landlord, I have carefully considered the tenant's undisputed evidence before me.

The tenants have provided a bank receipt showing a payment was made of \$600.00 on September 23, 2016. I am therefore satisfied with the undisputed evidence before me that at the time the Notice was issued and served upon the tenants there was no outstanding rent for October, 2016. Consequently, I find the Notice has no force or effect and is hereby cancelled.

Conclusion

The tenants' application is allowed. The 10 Day Notice to End Tenancy dated October 18, 2016 is cancelled and the tenancy will continue until legally ended.

The tenant is at liberty to file a new application for the remainder of her application not heard at this hearing today.

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: December 13, 2016

Residential Tenancy Branch