



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR OLC ERP

This hearing dealt with the tenant's Application for Dispute Resolution ("application") under the *Residential Tenancy Act* ("Act"), seeking to cancel a 10 day Notice to End Tenancy dated February 18, 2018 ("10 Day Notice"), for an order directing the landlord to comply with the Act, regulation or tenancy agreement and for an order for emergency repairs for health or safety reasons.

An agent for the landlord ("agent"), the landlord and the tenant attended the teleconference hearing. The parties provided affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

Neither party raised any service issues in terms of documentary evidence.

Preliminary and Procedural Matters

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the application, the most urgent of which is the tenant's application to set aside the 10 Day Notice. I find that not all the claims on this application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to set aside the 10 Day Notice at this proceeding. The balance of the tenant's application is **dismissed, with leave to re-apply**.

The parties provided their email addresses at the outset of the hearing which were confirmed by the undersigned arbitrator. The parties confirmed their understanding that the decision would be emailed to both parties.

Issue to be Decided

- Should the 10 Day Notice be cancelled?

Background and Evidence

The parties agreed that a month to month tenancy began on August 1, 2016. Currently monthly rent of \$600.00 is due on the first day of each month. A copy of the 10 Day Notice was submitted in evidence. The parties agreed that the 10 Day Notice relates to the non-payment of utilities and both parties also confirmed that a written demand from the landlord to the tenant to pay the utilities has not been served on the tenant.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

10 Day Notice issued by landlord – Section 46(6) of the *Act* applies and states:

Landlord's notice: non-payment of rent

46 (6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) **the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,**

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

[My emphasis added]

Based on section 46(6) of the *Act* above, I find the 10 Day Notice is premature as the landlord confirmed that he has not provided a written demand for the tenant to pay utilities and waited the required 30 days for payment. Therefore, I cancel the 10 Day Notice and find that it is of **no force or effect** as the landlord neglected to serve the tenant with a written demand to pay utilities and wait 30 days for payment of those utilities.

I ORDER the tenancy to continue until ended in accordance with the *Act*.

Conclusion

The tenant's application is successful.

The 10 Day Notice is cancelled. The tenancy is ordered to continue until ended in accordance with the *Act*. The 10 Day Notice dated February 18, 2018 issued by the landlord is of no force or effect.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: April 27, 2018

Residential Tenancy Branch