



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RP, ERP, LAT, LRE, OLC, RR

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 46;
2. An Order for emergency and other repairs - Section 32;
3. An Order allowing a lock change - Section 70;
4. An Order restricting the Landlord’s access to the unit - Section 70;
5. An Order for the Landlord’s compliance - Section 62; and
6. A rent reduction.

The Landlord did not attend the hearing. I accept the Tenant’s evidence that the Landlord was served with the application for dispute resolution and notice of hearing (the “Materials”) by registered mail on October 20, 2018 in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Landlord is deemed to have received the Materials on October 25, 2018. The Tenant was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to the remaining orders claimed?

Background and Evidence

The Tenant states that on October 11, 2018 the Landlord served the Tenant in person with a 10 day notice to end tenancy for unpaid rent (the “Notice”). The Tenant confirms that the Notice indicates that the amount of \$1,450.00 is noted as unpaid rent due October 1, 2018. The Tenant states that no rents are outstanding. The Tenant states that the Parties entered into a mutual agreement that no rents are payable for October and November 2018 with the tenancy to end on December 1, 2018. The Tenant states that only repair that the Tenant is concerned with is the mold in the unit.

Analysis

Section 46(1) of the Act provides that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. Based on the undisputed evidence that no rents are payable and that the Parties agreed no rent would be payable for October 2018, I find that the Notice is not valid and that the Tenant is entitled to its cancellation. The tenancy continues until it ends as agreed between the Parties.

As the tenancy is ending shortly, as the repairs for mold in the unit are not emergency repairs, and as the remaining claims are only relevant to an ongoing tenancy, I dismiss the remaining claims with leave to reapply should the tenancy continue past December 1, 2018. The Tenant remains at liberty to make a claim for compensation should the Tenant have suffered any losses during the tenancy that were caused by the Landlord's breach of the Act or tenancy agreement.

Conclusion

The Notice is cancelled and of no effect.

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: November 09, 2018

Residential Tenancy Branch