



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes CNR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 46;
- more time to make an application to cancel the landlord's 10 Day Notice pursuant to section 66;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. The landlord did not attend this hearing, although I waited until 11:20 a.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 11:00 a.m. The tenant attended the hearing and was given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

The tenant testified that on October 22, 2018, he sent a copy of the Application for Dispute Resolution and Notice of Hearing to the landlord by registered mail. A registered mail tracking number was provided in support of service.

Based on the above evidence, I am satisfied that the landlord was served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the landlord.

Preliminary Issue – Scope of Application

Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the application to cancel the Notice to End Tenancy, I am exercising my discretion to dismiss the remainder of the issues identified in the tenants' application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

Issues

Should the landlord's 10 Day Notice to End Tenancy be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

The only 10 Day Notice on file was a Notice dated September 11, 2018 in regards to alleged unpaid rent from September 1, 2018. The tenant testified that he was also disputing a subsequent 10 Day Notice that he received in regard to an October rent payment. The tenant testified that he received this subsequent 10 Day Notice on November 20, 2018. The tenant did not provide any copy of this Notice or amend his application to dispute this subsequent Notice.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 10 Day Notice to End Tenancy.

The landlord failed to participate in the hearing and failed to provide reasons set out in the 10 Day Notice on file which is dated September 11, 2018.

Accordingly, the 10 Day Notice to End Tenancy dated September 11, 2018, is hereby cancelled and of no force or effect.

The tenant was advised that if he has since received a subsequent Notice to End Tenancy he would need to file a new application if he wished to dispute the Notice.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application from the landlord. **The tenant may reduce a future rent payment in the amount of \$100.00.**

Conclusion

I allow the tenant's application to cancel the landlord's 10 Day Notice to End Tenancy, dated September 11, 2018, which is hereby cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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 27, 2018

Residential Tenancy Branch