



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, MNDCT, RR, LRE, FFT

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the “Act”) for the following orders:

1. cancellation of the 10-Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice”), pursuant to section 46;
2. a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement, pursuant to section 67 of the Act;
3. an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to sections 27 and 65 of the Act;
4. an order to suspend or set conditions on the landlord’s right to enter the rental unit, pursuant to section 70(1) of the Act; and,
5. authorization to recover the filing fee for this application from the landlord pursuant to section 72.

RH, the landlord, and RM, the landlord’s lawyer appeared at the hearing.

RH and RM were given full opportunity under oath to be heard, to present evidence and to make submissions. RH and RM confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11

Preliminary Matters

At the outset of the hearing RH corrected the spelling of their first name. Based on section 64(3)(a) of the Act, I have amended the spelling of the landlord’s first name on the tenant’s application.

The tenant did not appear at the hearing. Rules of Procedure 7.3 and 7.4 discuss the consequences of a party not attending a hearing.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Furthermore, Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. In most circumstances the onus is on the person making the application.

Based on the above, in this case, the onus is on the tenant to prove their claims under sections 67, 27, 65 and 70(1) of the Act. As the tenant did not appear at the hearing to make submissions or present evidence, I dismiss these applications without leave to reapply.

Issue(s) to be Decided

Should the landlord's 10-Day Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all of the details of their submissions and evidence are reproduced here. The relevant and important aspects of the claims and my findings are set out below.

RH testified that the tenancy commenced on April 1, 2021. Monthly rent is \$1,200.00 payable on the first of each month. RH collected a security deposit in the amount of \$600.00 from the tenant, which RH continues to hold in trust.

RH testified that they served the 10-Day Notice on the tenant by pre-agreed email on March 2, 2023. Included in RH's evidence is a copy of an email dated January 16, 2023, in which the parties mutually agree to service by email.

The 10-Day Notice indicates it was issued because the tenant failed to pay rent in the amount of \$100.00. RH testified that they issued the 10-Day Notice because the tenant paid \$1,100.00 instead of \$1,200.00.

The tenant applied to dispute the 10-Day Notice.

Analysis

As stated above, according to Rule 6.6 of the Residential Tenancy Branch Rules of Procedure, in most circumstances the onus is on the person making the application. However, in some situations the Arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy. As a result, in this case, the onus is on the landlord to prove on a balance of probabilities that the tenancy should be ended for the reason identified on the 10-Day Notice.

RH testified that they issued the 10-Day Notice because the tenant failed to pay \$100.00 of rent on March 1st, 2023. I acknowledge that the tenant withheld \$100.00 from the rent due March 1st, 2023. However, while neither RH nor RM spoke to the contents of the decision of Arbitrator Thiessen dated February 8, 2023, the decision which is included in the landlord's evidence as Exhibit H, states the following at page 5:

As the tenant was successful in their Application, I find the Tenant is entitled to recover the \$100 filing fee. I authorize the Tenant to withhold the amount of \$100 from one future rent payment.

Based on the above, I find it more likely than not that the tenant withheld \$100.00 from March rent in accordance with Arbitrator Thiessen's decision of February 8, 2023. Importantly, the landlord did not provide any testimony or documentary evidence to the contrary. On that basis, I find that the 10-Day Notice was not validly issued as the tenant was entitled to withhold the \$100.00.

Therefore, I find in favour of the tenant and order that the 10-Day Notice is cancelled. The landlord is not entitled to an Order of Possession.

As the tenant was only partially successful in this application, I find that they are not entitled to recover the \$100 filing.

Conclusion

For the reasons outlined above, I grant the tenant's application for cancellation of the 10-Day Notice. The tenancy will continue until such time as it is lawfully 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: April 4, 2023

Residential Tenancy Branch