



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Exclusive Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNDCT, FFT

Introduction

This hearing was scheduled to deal with a tenant's application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and a Monetary Order for damages or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Preliminary and Procedural Matters

At the outset of the hearing, I explored service of hearing documents and evidence upon each other.

The tenant testified that he left a copy of the hearing package in the landlord's mail slot at the landlord's office on September 14, 2019. The landlord stated that she had placed a lot of various papers that were placed in the mail slot in a filing cabinet and did not read the tenant's hearing package until November 7, 2019.

As for serving evidence, the tenant acknowledged he did not serve the landlord with any evidence with his hearing package or at any time thereafter but stated he had provided emails and photographs to the landlord before he filed.

The landlord sent evidence to the tenant via email on November 8, 2019.

I informed the parties that both parties failed to properly serve their evidence upon each other but that I was prepared to deal with the Notice to End Tenancy if they wished to proceed. The landlord stated the 10 Day Notice had been withdrawn. I proceeded to ask questions of the parties and determined that in fact the 10 Day Notice had been

nullified before the tenant filed this Application for Dispute Resolution because he had made full payment of the outstanding rent within 5 days of receiving the 10 Day Notice. As such, the tenant's request for cancellation of the 10 Day Notice was moot at the time of filing.

The tenant confirmed that the primary issue under dispute is his request for monetary compensation.

I declined to give further consideration to the tenant's monetary claim for a number of reasons, including:

The hearing was scheduled on priority basis in response to the tenant requesting cancellation of an eviction notice when the only matter to resolve was a monetary claim and Rules 2.3 of the Rules of Procedure provides me discretion to sever matters not sufficiently related.

The tenant did not serve the Application for Dispute Resolution in a manner that complies with section 89 of the Act. Where an Application for Dispute Resolution pertains to a monetary claim, section 89(1) requires that it must be served to the respondent in person or by registered mail, unless the applicant has a substituted service order. The tenant placed the Application for Dispute Resolution in the landlord's mail slot which does not comply with service requirements of section 89(1).

The tenant did not sufficiently set out the claim. Section 59 of the Act requires that an applicant must include with their Application for Dispute Resolution the "full particulars of the dispute that is to be the subject of the dispute resolution proceedings". Rules 2.5 and 3.1 of the Rules of Procedure specify that a monetary claim must be accompanied by a detailed monetary calculation and that must be served upon the respondent. The Rules of Procedure require an applicant to serve evidence with the Application for Dispute Resolution where it is available at the time of filing and all evidence must also be served upon the respondent with the Application for Dispute Resolution or no later than 14 days before the hearing. In filing his Application for Dispute Resolution the tenant provided a very brief description as to the nature of his complaint without identifying relevant dates or other particulars and he did not describe how he arrived at the amount sought for compensation. The tenant uploaded photographs to the Residential Tenancy Branch on October 29, 2019 even though he acknowledged they were available months earlier; and, he did not serve that same evidence to the landlord with the Application for Dispute Resolution or thereafter.

I informed the parties that I was prepared to dismiss the tenant's monetary claim with leave to reapply. Neither party object to the tenant obtaining leave to reapply. I encouraged the parties to try negotiating with each other before the tenant decides to reapply. Also, I encouraged the parties to become familiar with monetary claims by reviewing the materials available on the Residential Tenancy Branch website and/or by contacting an Information Officer.

Conclusion

The 10 Day Notice was nullified by payment of the outstanding rent within five days of receiving the 10 Day Notice and that issue was moot by the time the tenant filed this Application for Dispute Resolution.

The tenant's monetary claim was dismissed with leave to reapply for reasons provided above.

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 15, 2019

Residential Tenancy Branch