



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, LRE, FFT
OPRM-DR

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenants (the “Tenants’ Application”) under the *Residential Tenancy Act* (the “*Act*”), seeking:

- Cancellation of a One Month Notice to End Tenancy for Cause (the “One Month Notice”);
- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”);
- An order for the Landlord to comply with the *Act*, regulation or tenancy agreement; and
- Recovery of the filing fee.

I note that section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the *Act*.

This hearing dealt with a Cross-Application for Dispute Resolution filed by the Landlord (the “Landlord’s Application”) and an Amendment to the Landlord’s Application (the “Amendment”) under the *Act*, seeking:

- An Order of Possession;
- A Monetary Order for outstanding rent;
- Compensation for damage to the rental unit; and
- Recovery of the filing fee.

The Landlord attended the hearing at the scheduled time, ready to proceed, and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Although the line remained open for 36 minutes, neither the Tenants nor an agent acting on their behalf appeared to provide any evidence or testimony for my consideration in relation to their own Application.

Rule 7.1 of the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. As the Landlord and I attended the hearing for the Tenants’ on time and ready to proceed and there was no evidence before me that the parties had agreed to reschedule or adjourn the matter, I commenced the hearing as scheduled at 9:30 A.M. on March 31, 2020. Rule 7.3 of the Rules of Procedure states that 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 reapply. Although the line remained open for 36 minutes, neither the Tenants nor an agent acting on their behalf appeared to provide any evidence or testimony for my consideration in relation to the Tenants’ Application. As a result, and pursuant to rule 7.3 of the Rules of Procedure, I dismiss the Tenants’ Application, in its entirety, without leave to reapply.

Although section 55 of the *Act* states that I must consider if the Landlord is entitled to an Order of Possession as the Tenants’ Application seeking cancellation of a 10 Day Notice and a One Month Notice has been dismissed, the Landlord stated that the Tenants have already vacated the rental unit and therefore an Order of Possession is not required. As a result, I have not considered whether either the 10 Day Notice or the One Month Notice comply with section 52 or the *Act* or whether the Landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*.

Having made the above finding, I will now turn to the Landlord’s Application and Amendment. The Rules of Procedure state that the respondents must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. As the Tenants did not attend the hearing, I inquired with the Landlord regarding the service of these documents as outlined below.

On March 26, 2020, the Landlord was granted an order of substituted service by the Residential Tenancy Branch (the “Branch”) allowing them to serve the Tenant I.W. documents in relation to their Application, Amendment, and Application for substituted service by email. In the hearing the Landlord stated that they served the Tenant I.W. and the Tenant J.T. the Application, Amendment, Notice of Hearing, copies of their documentary evidence, a copy of the Application for Substituted Service and a copy of the substituted service decision dated March 26, 2020, by email on March 29, 2020. Although the Landlord submitted documentary evidence in the form of e-mail chains indicating that they had sent both Tenants copies of their documentary evidence, the Application for Substituted Service and the decision dated March 26, 2020, there was

no documentary evidence before me that either of the Tenants had been served with a copy of the Landlord's Application, Amendment, or the Notice of Hearing.

The ability to know the case against you and to submit evidence in your defense is fundamental to the dispute resolution process. As a result, I find that it would be a breach of both the Rules of Procedure and the principles of natural justice to accept the Landlord's Application and Amendment for consideration in this hearing as I am not satisfied they have been served on or received by the Tenant I.W. in accordance with the order of Substituted Service dated March 26, 2020. Further to this, the Landlord attempted to serve the Tenant J.T. by email, which was prohibited in the decision dated March 26, 2020. As a result, I dismiss the Landlord's Application and Amendment with leave to reapply.

I grant the Landlord authority to serve the Tenant I.W. by email with any Application, or related documentation, filed with the Branch within 30 days from the date of this decision, in accordance with the order of substituted service dated March 26, 2020.

Conclusion

The Tenants' Application is dismissed without leave to reapply.

The Landlord's Application and Amendment are dismissed with leave to reapply. This is not an extension of any statutory time limit.

Should the Landlord file an Application with the Branch against the Tenant I.W. within 30 days of the date of this decision, I also grant the Landlord authority to serve any documents in relation to that Application on I.W. by email in accordance with the order of substituted service dated March 26, 2020. This is not a waiver of any requirement for the Landlord to satisfy the Arbitrator in any subsequent hearing that the appropriate documents were served or deemed served within the timelines stated in the *Act* and the Rules of Procedure.

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 1, 2020