



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC CNR

Introduction

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

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46.

The landlord did not attend this hearing which lasted approximately 10 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. Two of the named tenants attended and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenants testified that they were served with a 10 Day Notice to End Tenancy for Unpaid Rent dated February 10, 2021 and filed an application for dispute resolution on February 11, 2021. The tenants testified that, while they told the landlord verbally that they did not agree with the 10 Day Notice, they did not serve the landlord with their application for dispute resolution, notice of hearing or any materials.

Section 89(1) of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution:

89(1) An application for dispute resolution, ...when required to be given to one party by another, must be given in one of the following ways:

(a) by leaving a copy with the person;

- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71(1) [director's orders: delivery and service of document]...

Residential Tenancy Policy Guideline 12 further provides that:

Where the respondent does not appear at a dispute resolution hearing, the applicant must be prepared to prove service of the notice of hearing package...

An application for dispute resolution must be served on the other party. The tenants said that they informed the landlord of their intention to file an application at some point before filing but did not serve the landlord with the filed application for dispute resolution or notice of hearing to make them aware that an application exists. Therefore, I find that the application was not served on the landlord as required under the *Act*.

Accordingly, I dismiss the tenant's application with leave to reapply.

Conclusion

The tenants' application is dismissed in its entirety with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

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: May 17, 2021

Residential Tenancy Branch