



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNDCL, MNRL, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The applicant applied for:

- an order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent (the Notice) pursuant to sections 46 and 55;
- a monetary order for unpaid rent, pursuant to section 26;
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 9:59 A.M. to enable the tenant to call into this teleconference hearing scheduled for 9:30 A.M. The tenant did not attend the hearing. The applicant RB (the applicant), the applicant's counsel HF and witness SZ attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the applicant, his counsel and witness and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

I accept the testimony offered by witness SZ that the tenant was served with the application and evidence (the materials) by registered mail on March 09, 2021, in accordance with section 89(2)(b) of the Act (the tracking number is recorded on the cover of this decision).

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenant is deemed to have received the materials on March 14, 2021, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Preliminary Issue – Request to Amend the Application to change the applicant

The tenancy agreement indicates the landlord is company BI. The applicant affirmed he is the sole owner of company BI and represented company BI when the tenancy agreement was signed.

The Notice indicates the landlord is the applicant. The Notice was signed by witness SZ, acting as an agent of the applicant.

At the hearing the applicant stated he mistakenly named himself as the landlord in the Notice and in the application.

The applicant's counsel requested to amend the application to change the applicant to company BI and to name RB as the company's representative. The applicant's counsel stated the tenant is aware the landlord is company BI and that the applicant represents company BI.

Residential Tenancy Branch Rules of Procedure Rule 4.2 provides

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

In this matter, the Notice of Dispute Resolution and the Notice indicate individual RB as the landlord, not company BI. I do not find that the respondent could reasonably have anticipated that the applicant would amend his application at the hearing to change the applicant. As such, I deny this request.

Section 59(2)(b) of the Act states: "An application for dispute resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings."

Residential Tenancy Branch Policy Guideline 42 states:

Parties who are named as applicant(s) and respondent(s) on an Application for Dispute Resolution must be correctly named.

If any party is not correctly named, the director's delegate ("the director") may dismiss the matter with or without leave to reapply. Any orders issued through the dispute resolution process against an incorrectly named party may not be enforceable.

Based on the undisputed testimony offered by the attending parties, the tenancy agreement and the Notice, I find the applicant is not correctly named in this application.

Section 52(1)(a) of the Act requires the Notice to be signed and dated by the landlord.

As such, I dismiss the application for a monetary order and for an order of possession with leave to reapply.

The applicant must bear the cost of his filing fee, as the applicant was not successful.

Conclusion

I dismiss the application for a monetary order and for an order of possession with leave to reapply.

I dismiss the application for an authorization to recover the filing fee without leave to reapply.

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: June 04, 2021

Residential Tenancy Branch