



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes TT: OLC, CNR
 LL: OPM, OPN, OPB, FFL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Tenant’s Application for Dispute Resolution was made on January 4, 2022 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- to cancel a 10 Day Notice to End Tenancy for Unpaid Rent dated January 3, 2022 (the “10 Day Notice”); and
- an order for the landlord to comply with the Act, tenancy agreement or regulation.

The Landlord submitted two Applications for Dispute Resolution which were made on January 18 and 31, 2022 (the “Landlord’s Applications”). The Landlord applied for the following relief, pursuant to the *Act*:

- an order of possession for a mutual agreement to end tenancy;
- an order of possession for tenant’s notice to end tenancy;
- an order of possession for breach of vacate clause; and
- an order granting the recovery of the filing fee.

The hearing was scheduled for 9:30 A.M. on April 4, 2022 as a teleconference hearing. The Landlord and their Agent attended the hearing at the appointed date and time. No one appeared for the Tenant. The conference call line remained open and was monitored for 13 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlord, their Agent, and I were the only persons who had called into this teleconference.

Preliminary Matters

Rule 7.1 of 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 their Agent attended the hearing 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 April 4, 2022.

Rule 7.3 of the Rules of Procedure states that if a party 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. As neither of the Tenant nor a representative acting on their behalf attended the hearing to present any evidence or testimony for my consideration regarding the Tenant's Application, I therefore dismiss the Tenant's Application in its entirety without leave to reapply.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution 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 the *Act*. Having made the above finding, I will now turn my mind to whether the Landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*.

At the start of the hearing, the Landlord's Agent stated that the Tenant paid the outstanding balance of rent owed according to the 10 Day Notice within the five days permitted. As such, the Landlord's Agent confirmed that the 10 Day Notice is of no force or effect. I therefore find that the Landlord is not entitled to an Order of Possession or a monetary order for unpaid rent based on the 10 Day Notice that had been disputed by the Tenant.

The Landlord submitted two Applications. The Landlord's Agent explained that the first Application which was made on January 18, 2022 was not served to the Tenant. The Landlord's Agent stated that he submitted a new Application on January 31, 2022 for the exact same claims. The Landlord's Agent stated that once he received the Notice of Hearing from the Tenancy Branch, he went to serve the Tenant in person, however, no one was home. The Landlord's Agent stated that he subsequently posted the Notice of Hearing to the Tenant's door of the rental unit. The Landlord's Agent could not recall what day he served the Notice of Hearing. The Landlord's Agent referred to evidence of service, however, no evidence was submitted to the Residential Tenancy Branch in support.

Section 89 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]...

The Landlord has not served the Tenant in a manner required by section 89(1) of the *Act*. I am not satisfied that the Tenant was properly served with the Landlord's Applications for Dispute Resolution. As such, I dismiss the Landlord's Application with leave to reapply.

Conclusion

The Landlord did not serve the Tenant with the Notice of Hearing in accordance with Section 89 of the *Act*. I dismiss the Landlord's Application with leave to reapply. Leave to reapply does not extend any deadlines established pursuant to 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 04, 2022

Residential Tenancy Branch