



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NEST PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNR, OLC**

Introduction

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

1. Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to Sections 46(1) and 62 of the Act; and,
2. An Order for the Landlord to comply with the Act, regulations, and tenancy agreement pursuant to Section 62(3) of the Act.

The hearing was conducted via teleconference. The Landlord attended the hearing at the appointed date and time and provided affirmed testimony. The Tenant did not attend the hearing. 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 Landlord and I were the only ones who had called into this teleconference. The Landlord was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Landlord that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Landlord testified that he was not recording this dispute resolution hearing.

The Landlord served the Tenant with the 10 Day Notice on March 2, 2022 by posting the notice on the Tenant's door. In the Tenant's Notice of Dispute Resolution Proceeding, the Tenant confirms receipt of the 10 Day Notice by posting on March 16, 2022. The Landlord alerted me that this matter was heard in another file number, and they were granted an Order of Possession. I have noted the file number of the previous

matter on the cover sheet of this Decision. In that file, the parties uploaded a witnessed Proof of Service Notice to End Tenancy form indicating the 10 Day Notice was posted to the Tenant's door on March 2, 2022. I find the 10 Day Notice was deemed served on the Tenant on March 5, 2022 according to Sections 88(g) and 90(c) of the Act.

The Landlord confirmed receipt of the Tenant's Notice of Dispute Resolution Proceeding package for this hearing on March 24, 2022 by email (the "NoDRP package"). The Landlord testified that the NoDRP package did not include any evidence. I find that the Landlord was sufficiently served with the NoDRP package for this hearing on March 27, 2022, in accordance with Section 71(2)(c) of the Act.

Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlord's 10 Day Notice?
2. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession?
3. Is the Tenant entitled to an Order for the Landlord to comply with the Act, regulations, and tenancy agreement?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Landlord confirmed that this periodic tenancy began on December 1, 2016. Monthly rent is \$862.00 payable on the first day of each month. A security deposit of \$425.00, and a pet damage deposit of \$425.00 were collected at the start of the tenancy and are still held by the owners.

The Landlord stated that they were already granted an Order of Possession for the rental unit in this matter on April 13, 2022. They have served the Order of Possession on the Tenant and they are seeking a writ from the court.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

This hearing was conducted pursuant to RTB Rules of Procedure 7.3, in the Tenant's absence, therefore, all the Landlord's testimony is undisputed. Rules of Procedure 7.3 states:

Consequences of not attending the hearing: *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 re-apply.*

The Landlord testifies that they already received an Order of Possession for this rental unit on April 13, 2022. The Tenant did not attend this hearing to provide evidence on her application. Based on the undisputed evidence of the Landlord, I dismiss this application in its entirety without leave to re-apply.

As the Landlord already has an Order of Possession against the Tenant for this rental unit, I decline to issue another one.

Conclusion

I dismiss the Tenant's application without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: July 26, 2022

Residential Tenancy Branch