



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FIRSTSERVICE RESIDENTIAL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant: CNR, FFT
For the landlord: OPR-DR, MNR-DR, FFL

Introduction

On April 15, 2022 the Tenant applied for dispute resolution for an order cancelling the 10-Day Notice to End Tenancy for Unpaid Rent or Utilities issued by the Landlord (the “10-Day Notice”). The Tenant also seeks reimbursement of the Application filing fee.

On April 27, 2022, the Landlord applied for an order of possession of the rental unit, and recompense of unpaid rent amounts. Additionally, they applied for reimbursement of their Application filing fee. The Landlord filed this as a Direct Request; however, this application cannot be considered by that method when there is a prior extant request from the Tenant in place.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on August 18, 2022. Both parties attended the teleconference hearing.

Preliminary Matter – parties’ service of Notice of Dispute Resolution Proceeding

The Tenant described how they served notification of this hearing to the Landlord. This was directly to the Landlord’s office “within 3 or 4 days” of receiving it from the Residential Tenancy Branch. This was without any documentary evidence. The Landlord confirmed they received a copy of the Tenant’s Notice of Dispute Resolution Proceeding.

The Landlord in the hearing stated they used registered mail to send their notification to the Tenant. The Tenant stated they did not receive this. The Landlord could not retrieve registered mail information in the hearing to confirm they used that method, and details of the transmission of that mail. The Landlord stated the package they sent contained their evidence.

The *Act* s. 59 contains the provisions for starting proceedings in a dispute resolution: “. . . a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.”

The *Act* s. 89 gives the rules for service of the application for dispute resolution. This is by leaving a copy with the person or their agent or sending a copy via registered mail.

Additionally, the *Residential Tenancy Branch Rules of Procedure* that are crafted to ensure a fair process; these specify the documents to be served by the applicant (here, the Landlord) to the respondent (here, the Tenant). These are: the Notice of Dispute Resolution Proceeding provided when applying; the Respondent Instructions for Dispute Resolution; a process fact sheet; and other evidence submitted by the applicant.

Additionally, Rule 3.5 specifies that “the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the *Act* and these Rules of Procedure.”

The Landlord could not show service of the Notice of Dispute Resolution Proceeding to the Tenant. The *Act* requires proper service in line with administrative fairness in which a party’s legal rights and obligations are challenged. I dismiss the Landlord’s Application for Dispute Resolution for lack of service, **with leave to reapply**. The Landlord’s claim to the Application filing fee is dismiss without leave to reapply. Additionally, I make no consideration of the Landlord’s evidence for the reason of procedural fairness. The issues in this dispute are listed below.

Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the 10-Day Notice?

Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession pursuant to s. 55 of the *Act*?

Is the Landlord entitled to monetary compensation for unpaid rent pursuant to s. 55(1.1) of the *Act*?

Is the Landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

Background and Evidence

The parties confirmed the basic details of the tenancy agreement that was in place. The tenancy started on May 1, 2020 and reverted to a month-to-month arrangement after the first year. The Tenant paid \$1,500 at the start of the tenancy; the rent increased to \$1,550 in 2022. They paid a security deposit of \$750 and a pet damage deposit of \$750.

The Landlord clarified that the rent dispute in question is for the amount of \$1,500, not \$1,550. The Tenant in the hearing stated, "I'm pretty sure I received a notice at some point."

The Tenant applied on the basis of a 10-Day Notice issued by the Landlord on April 11, 2022 (the date specified in their Application). The Tenant stated they found this notice to end tenancy attached to their door, and confirmed the amount listed on the second page of the document was \$13,725.

In the hearing, the Landlord stated they provided a copy of the lease ledger to the Tenant on a number of occasions. A previous notice to end tenancy issued by the Landlord resulted in a previous dispute resolution hearing that the Landlord did not attend. The Landlord submitted they have not seen proof of any payment by the Tenant since September 2021. They made numerous requests to the Tenant for rent payment, but this Tenant, in the Landlord's submission, refuses to do so.

The Tenant makes their direct payment authorizations to the Landlord via an app called "ClickPay". These payments are not correctly forwarding to the Landlord. At one point

the Tenant went to their own bank who could not provide an explanation. The Tenant stated that at one point they stopped paying due to the previous dispute resolution hearing process. This was three months' equivalent of rent, for \$4,500, the months of December 2021, January 2022, and February 2022. In the Tenant's opinion, paying rent would "run contrary to what the Residential Tenancy Branch decision said".

The Landlord responded that they had asked the Tenant for proof of payment to start an investigation into why payments were not received. The Tenant was not forthcoming on this request. The Tenant stated their dialogue with the Landlord ended when the Landlord issued a notice to end the tenancy.

Analysis

The *Act* s. 46(1) states that a landlord may end a tenancy if rent is unpaid on any day after the rent is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the tenant receives the notice.

Following this, s. 52 states:

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) . . . state the grounds for ending the tenancy,
. . . and
- (e) when given by a landlord, be in the approved form.

Given my decision on the Landlord's evidence above, I find there is no copy of the 10-Day Notice in the evidence for my consideration.

In this matter, the onus is on the Landlord to show they have reason to end the tenancy. The Landlord spoke to the reasons in their testimony and submissions; however, there is no evidence to show the 10-Day Notice is valid and compliance with the provisions of s. 52(e). For this reason, the core of s. 46 is not established.

For this reason, I order that the 10-Day Notice is cancelled. There is insufficient evidence to show the 10-Day Notice issued by the Landlord in April 2022 is compliant with the requirements set out in s. 52. The tenancy remains in full force and effect.

Conclusion

I dismiss the Landlord's Application in its entirety; however, the Landlord has leave to reapply on this same issue. There is no reimbursement of the Application filing fee to the Landlord.

The Tenant's Application is granted. Because the Tenant was successful in this Application, I authorize the ONE-TIME deduction of the Application filing fee amount of \$100 from ONE future rent payment.

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

Dated: August 19, 2022

Residential Tenancy Branch