



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;

The hearing was conducted by conference call. The conference call began at 11:00 a.m. The landlord was in attendance. The tenant joined the conference call a few minutes after it started. At approximately 11:08 a.m. the Arbitrator put the parties on hold so he could review a related application initiated by the landlord. While the parties were on hold the landlord left the conference call. I waited until 11:20 a.m. for the landlord to rejoin the call but she did not.

Before leaving the call, the landlord testified that she had not been served with the tenant's application and that she only became aware as she received an e-mail from the Residential Tenancy Branch advising of the upcoming hearing. The tenant confirmed he did not serve the landlord with a copy of the application.

As the tenant failed to serve the landlord with a copy of the application for dispute resolution the tenant's application must be dismissed.

Typically, if a tenant's application to dispute a notice to end tenancy is dismissed, the landlord may be granted an order of possession if the landlord can satisfy that the Notice to End Tenancy complies with the form and content requirements of the Act. The landlord would also need to demonstrate that the outstanding rent as per the 10 Day Notice was not paid within 5 days of the notice being received by the tenant.

However, for an unknown reason, the landlord left the conference call and did not return to provide testimony in regards to the 10 Day Notice. As such, I am unable to grant the landlord an order of possession.

The tenant did indicate that he just got out of detox and he was intending to vacate the rental unit as soon as possible. The tenant was encouraged to touch base with the landlord and make these arrangements.

Conclusion

I dismiss the tenant's application 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: October 20, 2022

Residential Tenancy Branch