



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: OPR MNR FF

Landlord: CNR MNDCT RR RP OLC PSF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on October 20, 2022. Both parties applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the “Act”).

Both parties attended the hearing and provided affirmed testimony. The Landlord confirmed receipt of the Tenant’s Notice of Dispute Resolution Proceeding and evidence package and did not take issue with the service of these documents. I find the Tenant sufficiently served this above noted package for the purposes of this proceeding.

The Landlord stated she personally served her Notice of Dispute Resolution Proceeding and evidence package to the Tenant on July 5, 2022. The Landlord provided a signed proof of service document showing this was witnessed by a third party. The Tenant denied receiving this package. However, when weighing these two versions of events I find the Landlord has provided more compelling evidence and I find it more likely than not that the Landlord served the Tenant, in person, with her Notice of Dispute Resolution Proceeding and evidence on July 5, 2022.

Neither party filed an amendment to their application. However, the Landlord uploaded a copy of a 2nd 10 Day Notice to End Tenancy for Unpaid rent 2 days before this hearing. As stated during the hearing, the 2nd 10 Day Notice, issued in October 2022, will not be considered as part of this proceeding, given how late it was provided and the fact that neither party filed an amendment to include it as part of this hearing. The only 10 Day Notice before me is the 10 Day Notice from June 2022, which will be addressed further below.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Issues

Both parties are seeking multiple remedies under multiple sections of the *Act*, a number of which were not sufficiently related to one another. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues both parties applied for, and based on the evidence before me, I find the most pressing and related issues in this cross-application are related to the payment/non-payment of rent and the order of possession (whether or not the tenancy will continue, or end, based on the 10 Day Notice issued in June 2022.) As a result, I exercise my discretion to dismiss, with leave to reapply, all of the grounds in both applications with the exception of the following grounds:

- an order of possession based on a 10-Day Notice from June 2022 (the Notice) for unpaid rent or utilities and whether or not the Tenant is entitled to have this Notice cancelled; and,
- a monetary order for the Landlord for unpaid rent or utilities based off the June 2022 Notice.

Issues to be Decided

- Should the 10 Day Notice to End Tenancy from June 2022 be cancelled?
 - If not, is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a monetary order for unpaid rent or utilities based off the June 2022 Notice?

Background, Evidence and Analysis

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid.

The Tenant acknowledged receipt of the 10 Day Notice on June 2, 2022. A copy of this 10 Day Notice was provided into evidence and it lists that the Tenant failed to pay \$4,838.50 that was due as of June 1, 2022. The Landlord signed and dated her signature on the 10 Day Notice, filled out the names of the parties, and included the address of the rental unit. However, the Landlord failed to fill out the effective date of the 10 Day Notice, as shown below:

| | |
|--|------------|
| You must move out of the rental unit by: | DD/MM/YYYY |
|--|------------|

Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, **state the effective date of the notice**, state the grounds for ending the tenancy, and be in the approved form, as quoted below:

Form and content of notice to end tenancy

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) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,*
 - (d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and*
- (e) when given by a landlord, be in the approved form.*

In this case, I note that the Landlord did not put an effective date on the Notice. Given this deficiency in the June 2, 2022, 10 Day Notice, I find it does not meet the form and content requirements set forth under section 52 of the *Act*.

In light of the above, I grant the Tenant's request to cancel the June 2022 10 Day Notice. Accordingly, the tenancy continues at this time and until such time it legally ends.

Conclusion

The Notice issued on June 2, 2022, has been cancelled and the tenancy continues at this time.

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 21, 2022

Residential Tenancy Branch