



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), pursuant to section 46.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:40 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord's agents, agent M.M. and agent F.M. (the "agents") attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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 agents and I were the only ones who had called into this teleconference.

Agent M.M. confirmed the landlord's email address for service of this decision.

Preliminary Issue- End of Tenancy

Agent M.M. testified that the landlord discovered that the tenant abandoned the subject rental property during a routine inspection on October 21, 2022.

The tenant's application for cancellation of the Notice is moot since the tenancy has ended.

Section 62(4)(b) of the *Act* states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be

determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the tenant's application for cancellation of the Notice.

Pursuant to Rule 7.4 of the Rules of Procedure, I decline to consider any evidence submitted by the tenant because the tenant failed to attend the hearing and present their evidence.

Preliminary Issue- Service

Agent M.M. testified that the tenant served the landlord with this application for dispute resolution via email on August 2, 2022. I find that the landlord was sufficiently served for the purposes of this Act with the tenant's application for dispute resolution in accordance with section 71 of the Act because agent M.M. acknowledged receipt.

Agent M.M. testified that the tenant was served with the landlord's evidence via email. Agent M.M. testified that the landlord did not have an email service agreement with the tenant. The serving email was not entered into evidence.

Agent M.M. testified that the tenant did not provide a forwarding address at the end of this tenancy. Agent M.M. testified that after the tenant moved out, the landlord served their evidence on the tenant via registered mail, to the subject rental property.

Agent M.M. testified that if the tenant had mail forwarding, they may have received the evidence. Agent M.M. testified that the landlord did not have any evidence that the tenant forwarded their mail from the subject rental property or otherwise received the registered mail. The landlord did not enter into evidence a receipt for the registered mailing or tracking information. No proof of service documents whatsoever were entered into evidence for the landlord's evidence service.

Section 88 of the Act sets out the approved methods of service for documents other than applications for dispute resolution, as follows:

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served 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 ordinary mail or 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 ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e)by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f)by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g)by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h)by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i)as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j)by any other means of service provided for in the regulations.

Section 43(1) of the Regulation to the Residential Tenancy Act states:

For the purposes of section 88 (j) [*how to give or serve documents generally*] of the Act, the documents described in section 88 of the Act may be given to or served on a person by emailing a copy to an email address provided as an address for service by the person.

Residential Tenancy Guideline #12 states:

To serve documents by email, the party being served must have provided an email address specifically for the purposes of being served documents. If there is any doubt about whether an email address has been given for the purposes of giving or serving documents, an alternate form of service should be used, or an order for substituted service obtained.

As no proof of service documents pertaining to the landlord's evidence were entered into evidence, I find that the landlord has not proved, on a balance of probabilities, that the landlord's evidence was served as described by agent M.M.

I find that even if the landlord's evidence was served as testified to by agent M.M., the landlord's evidence is excluded from consideration for failure to serve in a method approved of under section 88 of the *Act*.

I find that as the landlord and the tenant did not have an email service agreement, the landlord was not permitted under section 88(j) to serve the tenant via email.

I find that if agent M.M.'s testimony is true, and the landlord served the tenant via registered mail at the subject rental property after the tenant moved out, the service does not comply with section 88(c) of the *Act* because at the time of service the tenant did not reside at the subject rental property.

Pursuant to my above reasons, the landlord's evidence is excluded from consideration.

Preliminary Issue- Section 55(1.1)

Section 55(1) and section 55(1.1) of the *Act* state:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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.

In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

I find that without the landlord's documentary evidence, I am unable to determine if the Notice complies with section 52 of the *Act* as I do not have the Notice properly before me. Pursuant to my above findings, I decline to make any award for unpaid rent under section 55(1.1) of the *Act*.

The landlord is at liberty to file an application for dispute resolution seeking monies for unpaid rent and or damages for overholding against the tenant.

Conclusion

The tenant's application for dispute resolution is dismissed without leave to reapply.

The landlord has liberty to file an application for dispute resolution seeking monies for unpaid rent and or damages for overholding against the tenant.

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: December 02, 2022

Residential Tenancy Branch