



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR-MT, MNRT, MNDCT, RR, RP, PSF, OLC, FFT

Introduction

The Tenant filed an Application for Dispute Resolution (the “Application”) on October 14, 2022:

- (a) to dispute a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities (the “10-Day Notice”), needing more time to dispute
- (b) reimbursement for costs of emergency repairs they made during the tenancy
- (c) compensation for monetary loss or other money owed
- (d) reduced rent for repairs, services or facilities agreed upon but not provided
- (e) repairs made to the unit after contacting the Landlord with no completion
- (f) provision of services or facilities required by the tenancy agreement/law
- (g) the Landlord’s compliance with the legislation and/or the tenancy agreement
- (h) reimbursement of the Application filing fee.

On November 14, 2022 the Tenant submitted an amendment to their Application to dispute another 10-Day Notice served on November 9, 2022.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on December 1, 2022. In the conference call hearing, I explained the process and offered the attending parties the opportunity to ask questions.

The Tenant applied for an order for substituted service to the Landlord to properly advise the Landlord of their Application. This was specifically for the hearing application documents issued to them by the Residential Tenancy Branch on October 28, 2022. The Landlord agent who attended confirmed they received the notice of this hearing in this manner.

Preliminary Matter – Tenant service of evidence to Landlord

In the hearing, the Tenant described sending their evidence to the Landlord on November 30, 2022 via email. They provided evidence to the Residential Tenancy Branch in this same manner on that same date.

Rule 3.14 of the *Residential Tenancy Branch Rules of Procedure* (the comprehensive set of rules developed to ensure a fair, efficient and consistent process for resolving disputes) sets a timeline of “not less than 14 days before the hearing” for evidence sent to the Respondent (here, the Landlord) and the Residential Tenancy Branch.

The Tenant in the hearing stated plainly that they forwarded evidence to the Landlord and provided it to the Residential Tenancy Branch on November 30, the day prior to this scheduled hearing. The December 1 hearing date was set on October 28, 2022 and the Tenant was notified of that date via the Notice sent to them on that date.

I find this is evidence that was readily available to the Tenant at the time they applied for this hearing. By application of Rule 3.17, I exclude this evidence from consideration because it was not provided to the Residential Tenancy Branch and the Landlord in line with Rule 3.14. The Tenant did not explain clearly how and when they forwarded individual pieces of evidence to the Landlord; for this reason, I take the Tenant’s statement that they provided evidence to the Landlord on November 30 as fact, and all of their provided evidence for this hearing is excluded from consideration.

Additionally, I apply Rule 3.7 regarding the need for evidence to be organized, clear, and legible. The Tenant’s evidence was piecemeal and not organized, clear, or legible. I exclude the Tenant’s evidence from consideration for this reason.

Preliminary Matter – relevant issues

The *Residential Tenancy Branch Rules of Procedure* permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. Rule 2.3 describes ‘related issues’, and Rule 6.2 provides that the Arbitrator may refuse to consider unrelated issues. It states: “. . . if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hearing other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.”

As I stated to the parties in the hearing, the matter of urgency here is the possible end of this tenancy. I find the most important issue to determine is whether or not the tenancy is ending, based on any of the notices to end tenancy issued by the Landlord.

By application of Rule 6.2, I dismiss the other parts of the Tenant's Application – parts b) through g) listed above, with leave to reapply.

Issue(s) to be Decided

Is the Tenant entitled to more time in which to file their Application pursuant to s. 66 of the *Act*?

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

Is the Landlord entitled to an Order of Possession pursuant to s. 55 of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee?

Background and Evidence

The Tenant initially applied on a 10-Day Notice that they stated was issued on September 2, 2022. This allegedly was sent to them via an email address they state was not authorized by them for this purpose. The Landlord wrote the amount of \$8,000 as the rent amount owing which formed the basis for service of the 10-Day Notice. The Tenant indicated they had no knowledge of the amount involved or how the Landlord calculated that amount as rent owing at that time.

The Landlord who attended the hearing did not describe the amount in full. There was no evidence proffered by the Landlord for this hearing.

The Tenant amended their Application on November 14, 2022. This was to dispute another 10-Day Notice they received on November 9, 2022 by registered mail.

The Landlord spoke about their discussions with the Tenant on their need to pay rent. According to the Landlord, the Tenant led them to believe that they would pay and told the Landlord that they had a post-dated cheque ready for this purpose. The Landlord stated the Tenant had different options on how to pay already in place.

Analysis

The *Act* s. 46 states, in part:

46 (1)A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date 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.

In this hearing, the Landlord did not submit a copy of either the September 10-Day Notice or the November 10-Day Notice. I excluded the Tenant's evidence for reasons of its lateness in the Application process. Because of this, there is no copy of either 10-Day Notice in the evidence and I cannot verify if either of those documents is correct, containing mandatory information that the *Act* specifies.

In this matter, the onus is on the Landlord to provide that they have a valid reason for ending a tenancy. The Landlord spoke to some of the reasons in the hearing; however, there is insufficient evidence to show either 10-Day Notice is valid and compliant with the provisions of s. 52(e).

For this reason, I order the September 10-Day Notice is cancelled. Similarly, I order the November 10-Day Notice is cancelled.

With both 10-Day Notice cancelled, the tenancy will continue and there is no order of possession to the Landlord.

In ending a tenancy, the Landlord carries the burden of proof and evidence of the service of a notice to end tenancy as well as the actual form used, is fundamental. This was the deciding factor in this decision, despite the Tenant applying late and after the 5-day time limit specified in the 10-Day Notice. Without a form in the evidence to show the Tenant was fully informed of that important timeline, the timeline for their Application is unresolved. The Landlord must

show the Tenant was fully informed of all rights and obligations associated with any notice to end tenancy, and that requires documentary proof.

As the Tenant was successful in this Application, I find the Tenant is entitled to recover the \$100 filing fee they paid for this Application. I authorize the Tenant to withhold the amount of \$100 from one future rent payment.

Conclusion

For the reasons above, I order that the 10-Day Notice issued on September 2, 2022 as indicated on the Tenant's Application is cancelled and of no force or effect. The 10-Day Notice issued on November 9, 2022, as indicated in the Tenant's Application, is cancelled and of no force or effect. The tenancy shall remain ongoing.

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: December 6, 2022

Residential Tenancy Branch