



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, FFT

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 46 cancelling a 10-Day Notice to End Tenancy signed on July 13, 2022 (the “10-Day Notice”);
- an order pursuant to s. 62 that the Landlord comply with the *Act*, Regulations, and/or the tenancy agreement; and
- return of her filing fee pursuant to s. 72.

L.G. appeared as the Tenant. D.S. aka S.W. appeared as the Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

At the outset of the hearing, I enquired whether the Tenant had served her application materials on the Landlord. The Tenant advised that she sent her application and evidence on the Landlord via regular mail, though could not recall the date she sent it. No registered mail tracking information could be provided. The Landlord denied receiving anything from the Tenant and testified that they received notice of the hearing directly from the Residential Tenancy Branch.

I was advised by the parties that the Tenant had vacated the rental unit, with the Tenant saying she vacated on September 25, 2022 and the Landlord saying she left on October 5, 2022. I make no findings on when the tenancy came to an end, though it there is no dispute that the tenancy is over. Accordingly, the issues in dispute in the Tenant’s application are moot.

The Landlord testified that they were unable to serve the Tenant as the Tenant had not provided a forwarding address. The Landlord indicated that they seek an order for unpaid rent and were led to believe that could be accomplished on the Tenant's application.

There are several procedural issues raised by the present matter. Rule 3.1 of the Rules of Procedure requires applicants, in this case the Tenant, to serve the Notice of Dispute Resolution and their evidence on the respondent. Section 89 of the *Act* permits service to a person's mailing address, though this must be registered mail. I find that the Tenant failed to serve her evidence by way of registered mail and thus failed to demonstrate service in accordance with the *Act*. The Landlord correspondingly, was unable to demonstrate service of their evidence such that it would not be procedurally fair to the Tenant to include and consider the evidence.

In light of the fact that the tenancy is over and the Notice of Dispute Resolution was not served, I find that the appropriate course is dismiss the application without leave to reapply in its entirety. The Landlord is at liberty to file an application seeking an order for unpaid rent, though given the issues of service I would decline to apply s. 55(1.1) of the *Act* under the circumstances.

At the conclusion of the hearing, I enquired whether the parties could provide their forwarding address to one another. The Tenant refused to do so, though both parties have confirmed their email address. I have reproduced the email address on the cover page of this decision. To be clear, I am not making an order for substitutional service for a prospective application nor am I absolving the parties from being required to demonstrate service in accordance with the *Act* at a future hearing. Any issues with respect to service for a future application will need to be determined by the arbitrator at that hearing.

I make no findings of fact or law with respect to the substantive issues in this matter other than to note that the tenancy has come to an end, though the end date of the tenancy will need to be determined given the discrepancy in the evidence provided to me. This dismissal does not alter any of the time limitations that may apply under the *Act*.

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 06, 2022

Residential Tenancy Branch