



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR-MT

Introduction

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

- more time to cancel a Notice to End Tenancy, pursuant to section 66; and
- 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 11:12 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was 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 landlords and I were the only ones who had called into this teleconference.

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.

Preliminary Issue- Service

The landlord testified that the tenant served him with this application for dispute resolution via email on July 25, 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 the landlord acknowledged receipt.

The landlord testified that he served the tenant with his evidence via email on November 25, 2022. The landlord testified that he did not have an email service agreement with the tenant. The serving email was not entered into evidence.

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.

I find that the tenant did not provide the landlord with written authorization to serve via email. Therefore, the landlord was not permitted to serve the tenant with the landlord's evidence via email. The landlord's evidence is therefore excluded from consideration.

Section 3.15 of the Residential Tenancy Branch Rules of Procedure (the "*Rules*") states that the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

I find that had the landlord proved that he was permitted to serve the tenant via email, and did so serve on November 25, 2022, the service would have been late. November 25, 2022 is six clear days before this hearing. I also note that pursuant to section 90 of the *Act*, if the landlord proved that the tenant was served via email on November 25, 2022, the tenant would not have been deemed to have received it until November 28, 2022, three clear days before this hearing. I find that in either scenario, if the landlord's evidence was permitted to be served via email it would still have been excluded, because it was not served in accordance with section 3.15 of the *Rules*.

Preliminary Issue- End of Tenancy

The landlord testified that the tenant moved out at the end of August 2022.

The tenant's application for cancellation of the Notice and more time to dispute the Notice are 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 and for more time to dispute the Notice.

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