



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SAINI'S HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, OFL, MNRL, MNDL, OL

Introduction

This hearing dealt with the landlord's application, filed on September 21, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for unpaid rent and because the rental unit appears uninhabitable due to events out of the landlord's control and the tenancy agreement is frustrated, pursuant to section 55;
- a monetary order for unpaid rent and for damage to the rental unit, pursuant to section 67; and
- other relief, identified as unpaid rent.

The tenant did not attend this hearing, which lasted approximately 18 minutes. The landlord's two agents, "landlord HS" and "landlord SS," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing began at 11:00 a.m. and ended at 11:18 a.m. I monitored the teleconference line throughout this hearing. 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 landlord's two agents and I were the only people who called into this teleconference.

At the outset of this hearing, I informed landlord HS that I could not hear him properly because his speakerphone was causing echoing and feedback. He stated that he could not remove his telephone from speakerphone because he would have difficulty hearing. I notified him that by remaining on speakerphone, I might miss important information that might affect this decision about the landlord's application. He affirmed his understanding of same and stated that he was prepared for the above consequences.

He affirmed that he did not require TTY or any hearing assistance or hearing accommodation at this hearing.

Landlord HS confirmed the names and spelling for him and landlord SS. He stated that he and landlord SS, who is his wife, co-own the landlord company ("landlord") named in this application. He provided the legal name of the landlord and the tenant. He said that the landlord owns the rental unit. He stated the rental unit address. He provided his email address for me to send a copy of this decision to the landlord after the hearing. He identified himself as the primary speaker for the landlord at this hearing.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("*Rules*") does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, landlord HS affirmed, under oath, that neither he, nor landlord SS, would record this hearing.

I explained the hearing process to the landlord's two agents. I informed them that I could not provide legal advice to them, and they could hire a lawyer for same. I notified them that my role as an Arbitrator was to make a decision regarding this application. They had an opportunity to ask questions, which I answered. They did not make any adjournment or accommodation requests.

Preliminary Issue – Monetary Application

I provided the landlord's two agents with ample and additional time during this hearing to search through their documents and provide evidence regarding service, as they requested same.

Landlord HS testified that the tenant was served with the landlord's application for dispute resolution hearing package on October 7, 2022, by way of posting to the door.

Landlord HS stated that the tenant was served with the landlord's amendment to increase its monetary claim for unpaid rent and for damages from \$3,266.00 to \$5,990.00, on January 10, 2022, by way of posting to the door.

Section 89(1) of the *Act* outlines the methods of service for an application for dispute resolution, for a monetary order, which reads in part as follows (my emphasis added):

89 (1) An application for dispute resolution ..., when required to be given to one party by another, must be given 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 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 registered mail to a forwarding address provided by the tenant;**
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].*

I informed landlord HS that posting to the door is not a permitted method of service, pursuant to section 89(1) of the Act, for monetary claims. Further, the tenant did not attend this hearing to confirm receipt of the above documents.

I notified the landlord's two agents that the landlord's monetary application for unpaid rent and for damage, was dismissed with leave to reapply. I informed them that the landlord is at liberty to file a new application and pay a new filing fee, if it wants to pursue these claims in the future. Landlord HS confirmed his understanding of same.

Preliminary Issue – Order of Possession

The landlord provided a copy of the landlord's Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated July 10, 2022 ("10 Day Notice"), using an old and outdated RTB form, that is no longer available on the RTB website. The effective move-out date on the notice is July 20, 2022.

Sections 46 and 52 of the Act, state in part (my emphasis added):

- 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.*

(2) A notice under this section must comply with section 52 [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**
(e) when given by a landlord, be in the approved form.

The landlord did not issue a 10 Day Notice to the tenant in the approved RTB form, as required by sections 46 and 52 of the *Act*. The landlord used an old and outdated form, that is no longer available or approved by the RTB. I informed the landlord's two agents of the above information during this hearing. Landlord HS confirmed his understanding of same.

The current approved RTB form for a 10 Day Notice is dated March 3, 2021, is 3 pages total, has the names, dates, and contact information of both parties on page 1, the amount of unpaid rent and utilities on page 2, and the instructions sheet on page 3. I informed the landlord's two agents that the current approved RTB form is available on the publicly accessible RTB website. The old form provided by the landlord is only 2 pages total, and has all the information on page 1, with the instructions sheet on page 2.

On a balance of probabilities and for the above stated reasons, the landlord's application for an order of possession for unpaid rent, based on the 10 Day Notice, dated July 10, 2022, is dismissed without leave to reapply. The landlord's 10 Day Notice, dated July 10, 2022, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*. I informed the landlord's two agents of my decision verbally during this hearing. Landlord HS confirmed his understanding of same.

The description provided by the landlord on the online RTB dispute access site states the following, with respect to the landlord's claim for an order of possession because the rental unit appears uninhabitable due to events out of the landlord's control and the tenancy agreement is frustrated:

"The suite is so filthy & he never attempt to clean that. The laminate flooring got damaged by water. People are complaining about the safety because of all the clutter he got outside the unit."

The landlord's two agents did not provide any testimony or sufficient documentary evidence regarding the above claim. Therefore, this claim is dismissed with leave to reapply.

Conclusion

The landlord's application for an order of possession for unpaid rent based on the 10 Day Notice, dated July 10, 2022, is dismissed without leave to reapply.

The landlord's 10 Day Notice, dated July 10, 2022, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

The remainder of the landlord's application is dismissed with leave to reapply.

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: January 24, 2023

Residential Tenancy Branch