



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding Sekhorn and Sons Nursery Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNR, MNDCT, LRE, FFT, OPR, FFL**

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties pursuant to the Residential Tenancy Act (the "Act") for Orders as follows:

The tenant applied as follows:

- For cancellation of the landlords' 10 Day Notice to End Tenancy ("10 Day Notice") pursuant to section 46 of the Act
- For a monetary order for damage or compensation pursuant to section 67 of the Act
- For an order suspending or setting conditions on the landlord's right to enter to the rental property pursuant to section 70 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

The landlord applied as follows:

- For an order of possession pursuant to section 55 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

Both parties attended the hearing with the agents for the landlord RD and CW, and agent for the tenant SM. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The tenant confirmed receipt of the 10 Day Notice served on December 9, 2022. Pursuant to section 88 of the Act the tenant is found to have been served with the notice in accordance with the Act.

The landlord testified that they received the tenant's dispute notice and materials and based on their testimony I find the landlord duly served in accordance with sections 88 and 89 of the Act.

The landlord testified that he did not serve his dispute notice or materials on the tenant, and I will not consider the landlord's written evidence on this application pursuant to Rule of Procedure 3.1.

Preliminary Issue

The tenant applied for several other orders in addition to cancellation of the 10 Day Notice. These issues are not related to the dispute of the 10 Day Notice and are therefore severed pursuant to Rule 2.3 of the RTB Rules of Procedure. The tenant has leave to reapply on these issues. This decision does not extend any time limits set out in the Act.

Issue(s) to be Decided

1. Is the 10 Day Notice valid and enforceable against the tenant? If so, is the landlord entitled to an order of possession?
2. Is either party entitled to a reimbursement for their respective filing fees?

Background and Evidence

The tenancy commenced September 1, 2021. Rent was \$1,000.00 per month due the first day of the month. No security or pet deposits were paid. The tenant still occupies the rental unit.

Neither party provided a copy of the 10 Day Notice in evidence. The evidence provided by the parties orally was that the 10 Day Notice was posted to the tenant's door December 9, 2022 and had an effective date of December 19, 2022.

Analysis

RTB Rules of Procedure 6.6 states, “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.” In this case, the landlord has the burden of proving the validity of the 10 Day Notice served on the tenant.

The 10 Day Notice was not produced in evidence by either party. Section 52 of the Act requires me to consider whether the notice meets certain form and content requirements. Without the 10 Day Notice before me I cannot consider the form and content of the notice. Therefore the landlord’s application for an order of possession is dismissed. The landlord’s application for recovery of the filing fee is also dismissed as the landlord was unsuccessful in their initial application.

As the landlord has the burden of proving the validity of the 10 Day Notice when the tenant files a dispute, I find that the landlord has not satisfied their onus to establish that the 10 Day Notice meets the form and content requirements of section 52 of the Act and therefore the tenant’s dispute application is granted. As the tenant was successful in her application she is entitled to recover the filing fee for the application.

Conclusion

The landlord’s dispute application is dismissed. The tenant’s dispute application is granted. The tenancy shall continue until it is ended in accordance with the Act.

In recovery of the filing fee the tenant is entitled to deduct \$100.00 from one month’s rent on a one time basis.

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: February 26, 2023