



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, PSF, OLC

Introduction

The Tenants 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 October 18, 2022 (the “10-Day Notice”);
- an order pursuant to ss. 27 and 62 that the Landlord provide services or facilities required by the tenancy agreement or law; and
- an order pursuant to s. 62 that the landlord comply with the Act, Regulations, and/or the tenancy agreement.

L.R. and T.A. appeared as the Landlords. The Tenants did not attend the hearing, nor did someone attend on their behalf.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenants did not attend the hearing for their own application, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

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.

The Landlords advise that they were served with the Tenants’ application. Based on the acknowledged receipt by the Landlords of the Tenants’ application, I find that pursuant to s. 71(2) of the *Act* that the Landlords were sufficiently served with the Notice of Dispute Resolution.

Preliminary Issue – End of the Tenancy

At the outset of the hearing, I enquired with the Landlords whether the Tenants continued to reside within the rental unit. I was advised that the Landlords had obtained an order of possession effective on December 31, 2022 after filing for an early termination of the tenancy. I was provided with a file number on that matter, which I have put on the cover page of this decision. Review of the other file shows the parties entered a settlement on November 29, 2022 to end the tenancy on December 31, 2022. I am told by the Landlords that the Tenants did not honour the agreement and that a bailiff was retained, and the Tenants were moved out of the rental unit on January 19, 2023.

The Tenants evidence in this application also includes a decision dated September 21, 2022, which the Landlords confirm was their application for unpaid rent and they also provide the file number for that matter. This other file number is also listed on the cover page of this decision. Review of that matter shows the Landlords sought a monetary order for unpaid rent for the months of May, June, July, August, and September 2022. This claim was dismissed without leave to reapply for want of documentary evidence to support the allegation. As part of that decision, the Tenants were ordered to pay \$350.00 for other reasons. I am told by the Landlords that the Tenants have not paid the amount ordered.

As the Landlords have already obtained possession of the rental unit, I find that the application is moot. The tenancy is over. Accordingly, I dismiss the application without leave to reapply in its entirety.

I was advised by the Landlords at this hearing that the Tenants did not pay rent from May 2022 to when they were removed by bailiff. Pursuant to s. 55(1.1) of the *Act*, if a tenant's application to cancel a notice to end tenancy for unpaid rent is dismissed and the notice complies with the formal requirements of s. 52, then the Director must grant an order for unpaid rent.

The issue I have with the application of s. 55(1.1) under the circumstances is that the 10-Day Notice is moot. The dismissal of the Tenants' application was not based on the merits of the claim but on the fact that the parties agreed on November 29, 2022 that

the tenancy would end on December 31, 2022, this resulted in an order of possession and enforcement by bailiff on January 19, 2023.

I am also cognizant that there is an issue with respect to res judicata for a portion of the unpaid rent claim under s. 55(1.1) by virtue of the September 21, 2022 decision. Res judicata, specifically issue estoppel, is a legal doctrine which prevents adjudicative decision makers from hearing the same matter after a final decision on the topic has been made. I highlight this as a potential issue, though I make no findings on whether res judicata applies under the circumstances.

Given the above, I decline to make an order for unpaid rent under s. 55(1.1) of the *Act*. No findings on the enforceability of the 10-Day Notice were made as circumstances moved faster than the Tenants' application before the Residential Tenancy Branch, such that it is, in my view, inappropriate to make use of s. 55(1.1) under the circumstances. Obviously, the Landlords are free to file their own application seeking an order for unpaid rent, which will be determined on its merits.

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: March 02, 2023

Residential Tenancy Branch