



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, CNL, MNDCT, AAT, PSF, LRE, LAT, AS, OLC, FFT

Introduction and Preliminary Matters

On November 4, 2022, the Tenant made an Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities pursuant to Section 46 of the *Residential Tenancy Act* (the “*Act*”), seeking to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property pursuant to Section 49 of the *Act*, seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, seeking access to the rental unit pursuant to Section 30 of the *Act*, seeking the provision of services and facilities pursuant to Section 62 of the *Act*, seeking to restrict the Landlord’s right to enter pursuant to Section 70 of the *Act*, seeking permission to assign or sublet pursuant to Section 65 of the *Act*, seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both the Tenant and the Landlord attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

During the hearing, I advised the parties that as per Rule 2.3 of the Rules, claims made in an Application must be related to each other and that I have the discretion to sever

and dismiss unrelated claims. As such, I informed the parties that this hearing would primarily address the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent and Two Month Notice to End Tenancy for Landlord's Use of Property, that the other claims would be dismissed, and that the Tenant is at liberty to apply for these claims under a new and separate Application.

The Tenant advised that he served the Landlord the Notice of Hearing package by registered mail; however, he did not have any proof of this service and he did not know when he did this. The Landlord advised that she never received this package, and only found out about the hearing when she contacted the Residential Tenancy Branch.

When the Tenant was questioned about service of his evidence, he could not answer directly whether or not it was served. After asking him multiple times specifically if he served his evidence to the Landlord, he would continually answer in a confused or uncertain manner, and could not provide any definitive or consistent response. He finally stated that it was his belief that because he uploaded these documents to the file, that the Landlord would be able to see them.

Given the Tenant's uncertainty or possible intentional attempts to deceive or mislead regarding service of this evidence, I was satisfied that the Tenant was not reliable and that this evidence was not served to the Landlord. As such, and without any documented proof of service of the Notice of Hearing package, I find it more likely than not that the Notice of Hearing package was not served to the Landlord either.

The Landlord advised that she did not serve her evidence to the Tenant.

As neither party served their evidence to each other, there is no documentary evidence before me to consider or rely on.

All parties agreed that the tenancy started on August 8, 2022, and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on December 31, 2022. Rent was established at \$3,900.00 per month and was due on the first day of each month. As well, a security deposit of \$500.00 was also paid.

Given that the Tenant had already given up vacant possession of the rental unit, considering the merits of the notices to end tenancy were a moot point. In addition, as there was no documentary evidence before me, the merits of the notices to end tenancy could not be considered, in any event. As there were no issues that could be

considered, as the tenancy is already over, and as I am not satisfied that the Tenant served the Notice of Hearing package, the Tenant's Application is dismissed without leave to reapply on all issues except for the claim for monetary compensation.

As the Tenant was not successful in these claims, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

As an aside, both parties confirmed that their email addresses on the first page of this Decision are currently active and can be used for service of future documents.

Conclusion

Based on the above, I dismiss the Application for Dispute Resolution without leave to reapply, with the exception of the Tenant's claim for monetary compensation, which 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: March 16, 2023

Residential Tenancy Branch