



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR

Introduction

The Applicant seeks an order pursuant to s. 46 of the *Residential Tenancy Act* (the “Act”) cancelling a 10-Day Notice to End Tenancy signed on March 4, 2023 (the “10-Day Notice”).

K.H. appeared as the Applicant. M.W. appeared as the Respondent and his agent, L.M., spoke on his behalf.

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 parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other’s application materials.

At the outset of the hearing, the Respondent’s agent advised that the 10-Day Notice would be withdrawn and had been issued in error. It was submitted by the agent that K.H. is not a tenant and is an occupant. The Respondent provides a copy of the tenancy agreement as evidence of this. The agent advised that a new 10-day notice to end tenancy has been served to the proper tenant with that matter scheduled for hearing at another date. K.H. testified that she moved into the rental unit in May 2021 and that the Respondent was aware of her doing so by at least October 2022. At the outset of the hearing, she identified herself as a tenant.

There is a question of jurisdiction raised by the Respondent, namely that the *Act* only applies to tenancy agreements between landlords and tenants as per s. 2(1) of the *Act*. It does not apply to disputes between landlords and occupants of the rental unit as they do not share a contractual relationship. Strictly speaking, occupants are third parties to tenancy agreements. I make these general comments to advise of the issue. However, I make no findings on jurisdiction in the present circumstances because it is unnecessary to do so. Regardless of whether the *Act* applies or not, the issue is moot: the Respondent is withdrawing the 10-Day Notice.

Given this, the application is dismissed as it was unnecessary due to the Respondent's withdrawal of the 10-Day Notice.

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 31, 2023

Residential Tenancy Branch