



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the “Act”) for cancellation of the 10-Day Notice to End Tenancy for Unpaid Rent (the 10-Day Notice”).

RL (the “tenant”) appeared at the hearing.

Analysis

Section 89(1) of the Act states that applications for dispute resolution must be served in one of the allowable methods listed in that section.

However, RL testified that they did not serve the landlord with the Notice of Dispute Resolution Proceeding Package. Based on the foregoing, I dismiss the tenant’s application with leave to reapply.

Section 55(1) of the Act requires me to grant the landlord an order of possession if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy and the notice (a) complies with section 52 *[form and content of notice to end tenancy]*, and (b) the director, during the dispute resolution proceeding, dismisses the tenant's application.

However, Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states while in most circumstances the onus is on the person making the application, 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 onus is on the landlord to prove the reason they wish to end the tenancy. The landlord was not present at the hearing and as a result, I find they have not met the onus which is upon them to prove the reason they wish to end the tenancy. On that basis, the landlord is not entitled to an Order of Possession based on the 10-Day Notice.

Conclusion

The tenant's application is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

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: April 18, 2023

Residential Tenancy Branch