



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, LRE

Introduction

This hearing dealt with the Tenant's application under the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 10 day notice to end tenancy for unpaid rent or utilities (the "10 Day Notice") pursuant to section 46; and
- an order suspending or setting conditions on the Landlord's right to enter the rental unit pursuant to section 70(1).

The Landlord and the Tenant attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The Landlord was assisted towards the end of this hearing by her daughter, SH, who also provided some affirmed testimony.

The parties were informed that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Tenant's Name

The Tenant indicated that his name is CJM, though he goes by his middle name J. Based on the Tenant's testimony, I have updated the Tenant's name on this application pursuant to section 64(3)(c) of the Act.

Preliminary Matter – Service of Dispute Resolution Documents

The Landlord stated that the Tenant did not serve the Landlord with a copy of the notice of dispute resolution proceeding package (the "NDRP Package"). The Landlord confirmed that she received a courtesy copy of the NDRP Package from the Residential Tenancy Branch (the "RTB"). RTB records indicate that a copy of the NDRP Package

was emailed to the Landlord on March 17, 2023. Records further indicate that the Tenant requested to withdraw this hearing, but the Landlord did not agree and informed the RTB on March 24, 2023 that she intended to proceed. I find the Landlord was sufficiently served with the NDRP Package on March 17, 2023 pursuant to section 71(2)(b) of the Act.

The Tenant submitted some digital and documentary evidence which does not include a copy of the 10 Day Notice. The Tenant indicated that he sent a copy of his evidence to the Landlord via email. The Landlord denied having received any evidence from the Tenant. The Tenant did not submit a copy of any email sent to the Landlord or proof that the parties had agreed to accept service via email as required under the regulations. Since the Tenant was unable to provide proof of service in accordance with the Act and the Rules of Procedure, I exclude the Tenant's digital and documentary evidence from consideration for the purpose of this application.

The Landlord did not submit any digital or documentary evidence for this hearing.

Preliminary Matter – Severing an Unrelated Claim

Rules 2.3 and 6.2 of the Rules of Procedure state as follows:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

6.2 What will be considered at a dispute resolution hearing

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.

The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [*Related issues*]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

(emphasis added)

The Tenant has applied to cancel the 10 Day Notice but has included an unrelated claim regarding the Landlord's right to enter the rental unit. Pursuant to Rule 6.2 of the

Rules of Procedure, I sever and dismiss the Tenant's unrelated claim with leave to re-apply.

Preliminary Matter – No 10 Day Notice Submitted

Neither of the parties submitted a copy of the 10 Day Notice into evidence.

The Landlord was unable to find and refer to a copy of the 10 Day Notice during the hearing. The Landlord stated that the 10 Day Notice was dated January 8, 2023, with an effective date of January 17, 2023. The Landlord did not recall how much unpaid rent was indicated on the 10 Day Notice.

Where a tenant applies to cancel a notice to end tenancy, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove the reason they wish to end the tenancy.

Sections 55(1) and 55(1.1) of the Act allow the director to grant to a landlord an order of possession and a monetary order for unpaid rent on a tenant's application to dispute the landlord's notice to end tenancy, if the notice complies with section 52 of the Act and the tenant's application is dismissed or the notice is upheld during the dispute resolution proceeding.

According to section 52 of the Act, in order to be effective, a notice to end tenancy given by a landlord must be in writing, must be signed and dated by the landlord giving the notice, must give the address of the rental unit, must state the effective date of the notice, must state the grounds for ending the tenancy, and must be in the approved (RTB) form.

During this hearing, I informed the Landlord that in order to proceed with this matter, it was necessary for a copy of the 10 Day Notice to be submitted into evidence. I asked the Landlord to upload a copy of the 10 Day Notice by no later than 5:00 pm on the date of this hearing, which was April 14, 2023. I asked the Landlord to write this task down so that she would not forget it. After the hearing concluded at around 12:11 pm, I enabled the uploads function in the RTB dispute management system so that the Landlord could upload a copy of the 10 Day Notice to the RTB.

As at the date of this decision, or April 17, 2023, the Landlord has not uploaded a copy of the 10 Day Notice to the RTB. I have reviewed the communication records and do not find any evidence of communication between the parties and the RTB since the hearing

date. I find there is no explanation as to why the Landlord did not upload a copy of the 10 Day Notice as requested.

Under these circumstances, I am unable to determine whether the 10 Day Notice is a valid and effective notice to end tenancy under section 52 of the Act, such that the Landlord may be entitled to an order of possession and monetary order under sections 55(1) and 55(1.1) of the Act. I find the Landlord has not met the onus of proof in this application.

Accordingly, I order that the 10 Day Notice be cancelled. The Tenant's claim to dispute the 10 Day Notice is granted.

Conclusion

The 10 Day Notice is cancelled and of no force or effect. This tenancy shall continue until ended in accordance with the Act.

The Tenant's claim regarding the Landlord's entry into the rental unit is severed under the Rules of Procedure and dismissed with leave to re-apply. Leave to re-apply does not extend any applicable limitation periods.

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 17, 2023

Residential Tenancy Branch