



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR-MT, LRE, OLC, FFT

Introduction

The Tenant 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 and an order pursuant to s. 66 for more time to do so;
- an order pursuant to s. 70 restricting the Landlord’s right of entry;
- an order pursuant to s. 62 that the landlord comply with the Act, Regulations, and/or the tenancy agreement; and
- return of the filing fee pursuant to s. 72.

K.O. appeared as the Tenant. E.S. appeared as the Landlord’s agent.

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.

At the outset of the hearing, I enquired whether the Tenant continued to reside within the rental unit. The Tenant says she moved out of the rental unit on March 1, 2023. The Landlord’s agent says the Tenant left without providing notice and that the Landlord took back possession sometime on the weekend of April 8-9, 2023.

As confirmed by the parties, I find that the tenancy is over such that the relief sought by the Tenant in her application is moot. Accordingly, I dismiss the Tenant’s application, including the return of her filing fee, without leave to reapply.

Section 55(1.1) of the *Act* provides that where 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 I must grant an order for unpaid rent.

I enquired how the notice to end tenancy was served and was told by the Landlord's agent that it had been emailed on January 13, 2023. I was also told that one had been sent via registered mail sent on February 24, 2023, though I note that the Tenant filed her application on January 27, 2023. Further, no amendment disputing the notice from February 2023 such that it is not before me in this, the Tenant's application.

The Tenant indicates she did receive the 10-Day Notice but that it had been sent to the wrong email and that email is not an approved form of service between the parties. The Tenant objected to the method of service of the 10-Day Notice in dispute. The Landlord's agent says that the current property management company took over the property recently such that she was unaware if email was an approved form of service.

Section 43 of the Regulation permits service by way of email provided the email address was given for the purposes of providing an address for service. Given that email is not an approved form of service, I am unable to find that the 10-Day Notice in dispute from January 2023 was served in accordance with the *Act*.

I have not been provided with a copy of the relevant 10-Day Notice such that I cannot make a finding that it complied with s. 52 of the *Act*. Further, I cannot make a finding that the notice in dispute was served in accordance with the *Act*. Accordingly, I decline to grant an order for unpaid rent under s. 55(1.1) of the *Act*.

To be clear, I make no findings on the issue of unpaid rent and the Landlord is at liberty to advance a claim for unpaid rent but must do so by filing their own application.

At the conclusion of the hearing, the Tenant provided her mailing address to me and the Landlord's agent, indicating documents could be sent there. I have noted the address on the cover page. I also note the Tenant's email address on file on the cover page as well. This was done merely as a courtesy. I make no orders with respect to service of any future application filed by the parties, which the parties must ensure were served in accordance with the *Act*.

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 13, 2023

Residential Tenancy Branch