



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR

Introduction

The Tenant seeks an order pursuant to s. 46 of the *Residential Tenancy Act* (the “Act”) cancelling a 10-Day Notice to End Tenancy (the “10-Day Notice”).

M.N.-S. appeared as the Tenant’s advocate and advised the Tenant would not be attending. The Landlord did not attend the hearing, nor did someone attend on their behalf.

The Tenant’s advocate 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 Tenant’s advocate advises that the Landlord was served with the Tenant’s application by way of registered mail sent on February 10, 2023. I am provided with a copy of the tracking receipt by the Tenant as proof of service and a printout showing the package was received on February 13, 2023. I find that the Tenant’s application was served in accordance with s. 89 of the *Act*.

Cancellation of the 10-Day Notice

Rule 6.6 of the Rules of Procedure explains the onus and burden of proof applicable to hearings before the Residential Tenancy Branch. As made clear by Rule 6.6, the onus of proving a claim generally rests with the applicant except under certain circumstances, such as when a tenant files to dispute a notice to end tenancy. When a tenant files an application to dispute a notice to end tenancy, the onus of proving it was issued in compliance with the *Act* rests with the respondent landlord.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Landlord did not attend the hearing, it was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure and concluded at 2:41 PM without submissions from either party on the substantive issues in the Tenant's application.

As the Landlord must prove why the 10-Day Notice was served, I find that the Landlord has failed to do so as they failed to attend the hearing to present evidence on this point. Accordingly, I grant the Tenant's claim and hereby cancel the 10-Day Notice, which is of no force or effect. The tenancy shall continue until ended 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 24, 2023

Residential Tenancy Branch