



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNR, OPR-DR, MNR-DR, FFL**

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties pursuant to the Residential Tenancy Act (the "Act") for Orders as follows:

The tenants applied as follows:

- For cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") pursuant to section 46 of the Act

The landlord applied as follows:

- For a monetary order for unpaid rent pursuant to section 67 of the Act
- For an order of possession pursuant to section 55 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

The tenant, PV appeared for the tenants. The landlords did not appear. The tenants were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The tenants confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11. The tenant PV was affirmed.

The tenants confirmed receipt of the 10 Day Notice dated January 7, 2023 . Pursuant to section 88 of the Act the tenants are found to have been served with the notice in accordance with the Act

The tenant PV testified that they served the landlords with the dispute notice and materials by registered mail. The tenants did not provide proof of service in evidence. RTB Rule of Procedure 3.5 states:

3.5 Proof of service required at the dispute resolution hearing

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

Further the Dispute Notice received by the applicant tenants contained the following information:

The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.

As I do not have proof of service in evidence, I am not satisfied that the landlords were properly served with the tenants' application. The tenants' application is therefore dismissed with leave to reapply.

Issue(s) to be Decided

1. Is the 10 Day Notice valid and enforceable against the tenant? Are the landlords entitled to an order of possession?
2. Are the landlords entitled to a monetary order for compensation for unpaid rent?
3. Are the landlords entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced on June 1, 2020. Rent is \$375.00 per month due on the first of the month. The landlords did not take a security deposit. The tenants still occupy the rental unit.

Analysis

RTB Rules of Procedure 6.6 states, “The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlords must prove the reason they wish to end the tenancy when the tenants apply to cancel a Notice to End Tenancy.” In this case, the landlords have the burden of proving the validity of the 10 Day Notice served on the tenants.

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. Similarly, I have no evidence before me to establish that the landlord is entitled to a monetary order or to recover the filing fee for the application.

The landlords’ application is dismissed with leave to reapply.

Conclusion

Both the tenants’ application and the landlords’ application are dismissed with leave to reapply. The tenancy shall continue until it is 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: May 17, 2023

Residential Tenancy Branch