



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

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

Introduction

The tenant applied on March 13, 2023 for:

- (i) an order cancelling a notice to end tenancy for unpaid rent (the “Notice”), under section 46(4)(b) of the Act; and
- (ii) an order for the landlord to comply with the act under section 62 of the Act.

By way of cross-application, the landlord applied on March 27, 2023 for:

- (i) an order of possession on the Notice under section 55(2)(b) of the Act;
- (ii) a monetary order for unpaid rent under section 67 of the Act; and
- (iii) authorization to recover the cost of the filing fee under section 72 of the Act.

The landlord attended the hearing. No one dialled in on behalf of the tenant during the hearing, which lasted from 9:30 A.M. to 9:56 A.M.

Preliminary Issue – Service of Documents

The landlord affirmed that the landlord did not receive the tenant’s Notice of Dispute Resolution Proceeding and evidence. Therefore, all documentary evidence submitted by the tenant is excluded under section 3.13 and 3.15 of the Rules of Procedure.

The landlord further affirmed that the landlord served the tenant with the landlord’s Notice of Dispute Resolution Proceeding and evidence by posting it onto the door of the rental unit. Under section 89 of the Act, a Notice of Dispute Resolution Proceeding and evidence must be served either (i) in person or (ii) via registered mail. As the landlord did not use either of these methods of service, I find that the landlord failed to serve the tenant in accordance with section 89 of the Act. Therefore, all documentary evidence

submitted by the landlord is excluded under section 3.13 and 3.15 of the Rules of Procedure.

Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?
3. Is the landlord entitled to a monetary order for unpaid rent?
4. Is the landlord entitled to recover the cost of the filing fee?

Analysis

As the tenant did not attend the hearing to provide any evidence, I order the tenant's application dismissed, with leave to reapply.

Section 55(1) of the Act provides that, if a tenant applies to dispute a landlord's notice to end a tenancy, the landlord is entitled to an order of possession of the rental unit if (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and (b) the tenant's application is dismissed.

In addition, section 55(1.1) of the Act provides that, if the conditions in Section 55(1) of the Act are fulfilled, the landlord will be entitled to a monetary order for unpaid rent.

As neither party validly served each other with their respective documentary evidence, there is no Notice in evidence for me to review. Therefore, while the tenant's application is dismissed, I am unable to come to a finding on whether the Notice complies with section 52 of the Act. Based on this, I find that the landlord is not entitled to an order of possession nor a monetary order for unpaid rent.

Since the landlord was not successful in its application, the landlord's application to recover the cost of the filing fee under section 72 of the Act is dismissed.

Conclusion

The tenant's application is dismissed with leave to reapply.

The landlord's application is dismissed with leave to reapply.

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 08, 2023

Residential Tenancy Branch