



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, OLC

Introduction

The Tenant applied for dispute resolution (Application) and seeks the following:

- an order canceling a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) pursuant to section 46(4)(b) of the Residential Tenancy Act (the Act); and
- for the Landlord to comply with the Act, *Residential Tenancy Regulation* (the Regulation) or the tenancy agreement under section 62 of the Act

The Tenant attended the hearing and two Agents attended for the Landlord. The parties affirmed to tell the truth during the hearing. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

The Tenant testified they had not served the Notice of Dispute Resolution Package (the Materials) on the Landlord as they have vacated the rental unit. Rule 3.1 of the *Rules of Procedure* and section 59(3) of the Act states that an applicant must serve the Materials within 3 days of them being made available by the Residential Tenancy Branch. Given the above, I dismiss the Application without leave to reapply.

Analysis

Section 55(1) of the Act states that if a tenant applies for Dispute Resolution to dispute a landlord's notice to end tenancy, an Order of Possession must be granted if the tenant's application is dismissed and the landlord's notice complies with the form and content requirements set out in section 52 of the Act.

I find the Notice complies with section 52 of the Act, however, during the hearing the Landlord's Agent confirmed that the Tenant has vacated the rental unit and the Landlord now has possession of the rental unit. The Landlord's Agent confirmed that the Landlord does not require an Order of Possession therefore, I shall not issue one. They stated the Landlord only seeks a Monetary Order for unpaid rent.

Since the Application relates to a section 46 notice to end tenancy, the Landlord is entitled to an order for unpaid rent under section 55(1.1) of the Act.

I found the Landlord's Agent's testimony regarding unpaid rent to be unclear and inconsistent. The Landlord's Agents were initially unsure of the amount of unpaid rent at the time the Notice was issued. They acknowledged that there were two additional Tenants in addition to the Applicant, and one additional Landlord in addition to the Respondent, per the tenancy agreement and Notice, who were not named on the Application. When I asked if the individuals not named on the Application were still party to the tenancy agreement to enable me to determine if the Application should be amended to reflect this, the Landlord's Agents were unable to provide a clear response.

The Landlord's Agents stated the two Tenants not listed on the Application had made partial payments since the Notice was issued and had also vacated the rental unit. Whilst the Landlord's Agents acknowledged that the Tenants were jointly and severally responsible for rent, I found they had attributed differing amounts of unpaid rent to each Tenant which made the matter unclear to me.

The Landlord's Agents also mentioned items not related to the unpaid rent on the Notice such as unpaid utilities and cleaning costs following the Tenants vacating the rental unit on April 30, 2023 which also made the matter of the amount of unpaid rent sought from the Tenants unclear.

The Landlord's Agents disagreed on the status of the security deposit. At the start of the hearing, they testified the Landlord still retained the security deposit in full. Later in the hearing they testified that they had returned part of the security deposit to at least one of the Tenants who was not the Applicant.

Though I accept that the Tenants owe unpaid rent to the Landlord, I found the Landlord's Agents were not able to put forward this amount during the hearing to enable the attending Tenant a fair opportunity to respond to the claim. Additionally, they were unable to clarify the matter of which parties should be named on the Application, and

therefore on the Monetary Order they sought. As a result, I decline to issue a Monetary Order to the Landlord following the dismissal of the Tenant's Application. However, the Landlord is at liberty to make their own application for compensation against the Tenants.

Conclusion

The Tenant's Application is dismissed without 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 Act.

Dated: May 31, 2023

Residential Tenancy Branch