



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, CNC, OPT, MNDCT, LRE, LAT, OLC, FFT

Introduction

The Tenants applied for dispute resolution (Application) and seek an order canceling a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) under section 46(4)(b) of the *Residential Tenancy Act* (the Act).

The Tenants then amended their Application to include requests for the following:

- An order canceling a One Month Notice to End Tenancy for Cause under section 47(4) of the Act;
- An Order of Possession under section 54 of the Act;
- Compensation for monetary loss or other money owed under section 67 of the Act;
- To suspend or set conditions on the Landlord's right to enter the rental unit under section 70 of the Act;
- Authorization to change the locks to the rental unit under section 70 of the Act;
- For the Landlord to comply with the Act, *Residential Tenancy Regulation* (the Regulation) or the tenancy agreement under section 62 of the Act; and
- To recover the cost of the filing fee under section 72 of the Act.

The Tenants and the Landlord attended the hearing. 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 Landlord was assisted by a Translator and the Tenants were assisted by an Advocate.

The Tenants testified they served Notice of Dispute Resolution Package (Materials) on the Landlord via email. The Materials were provided to the Tenants by the Residential

Tenancy Branch on April 24, 2023. The Tenants put forward a number dates the Materials were served, ranging from April 25 to April 30, 2023.

I asked if there was an agreement between the parties to serve documents via email. The Tenants testified they asked the Landlord via an instant messenger application how they could send the Materials to them, and the Landlord told them they could be sent via email.

The Landlord testified they never received any documents from the Tenants. They agreed they had informed the Tenants that documents could be sent via email, but never received anything from the Tenants after that.

The Landlord stated they contacted the Residential Tenancy Branch after receiving an automated email from the Branch regarding a deadline for submitting evidence and requested a courtesy copy of the Materials. The Landlord stated they noted from the courtesy copy of the Materials that the Tenants were disputing the Notice but did not know about any of the other issues they requested.

The Tenants' Advocate initially submitted the Tenants has not had time to serve the Landlord with the Request to Amend a Despite Resolution Application forms (RTB-42T) on June 1, 2023 when the request for amendment was submitted. They then later stated they had been sent to the Landlord via email.

Rule 3.1 of the *Rules of Procedure* states that an applicant must serve the respondent with the Materials for their Application within 3 days of them being made available by the Residential Tenancy Branch. Rule 4.6 of the *Rules of Procedure* also states that when an application is amended, copies of the amended application and supporting evidence should be served on the respondents as soon as possible and must be received by the respondent not less than 14 days before the hearing.

Based on the testimony of both parties, I accept that there was an agreement between the parties to serve documents via email but no evidence before me indicated the Materials were ever served on the Landlord. Based on the record of communications on the Application, I find the Landlord did contact the Residential Tenancy Branch on June 1, 2023 and was provided a courtesy copy of the Materials. Given this, I am not satisfied that the Tenants, on a balance of probabilities, served the Materials in accordance with the *Rules of Procedure* and section 89 of the Act.

Therefore, I am not satisfied that the Landlord was sufficiently notified of the hearing, or the Tenants' claims I find the hearing can not proceed fairly. Based on this, I dismiss the Application with leave to reapply.

As the Tenants were not successful in their Application, I find they should bear the cost of the filing fee.

Conclusion

The 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 Act.

Dated: June 15, 2023

Residential Tenancy Branch