



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR-MT, PSF, LRE, LAT

Introduction

This hearing was scheduled to convene at 9:30 a.m. on February 23, 2024 concerning an application made by the tenant seeking the following relief:

- an order cancelling a notice to end the tenancy for unpaid rent or utilities;
- more time than prescribed to dispute a notice to end the tenancy;
- an order that the landlord provide services or facilities required by the tenancy agreement or the law;
- an order limiting or setting conditions on the landlord's right to enter the rental unit; and
- an order permitting the tenant to change the locks to the rental unit.

The tenant and the landlord attended the hearing, during which I learned that the landlord has not provided any evidence to the tenant. The landlord's evidentiary material was provided to the Residential Tenancy Branch dispute resolution system later than the time permitted by the Rules of Procedure. Any evidence that a party wishes to rely on must be provided to the other party even if they already have a copy because it is important for all parties to know what is before me. Since the landlord has not provided any of it to the tenant, I advised the parties that I would not consider the landlord's evidence.

The landlord submitted that the tenant did not serve the landlord with the Notice of Dispute Resolution Proceeding, and the landlord learned of the hearing by calling the Residential Tenancy Branch. The tenant was permitted to leave the call and contact another person for information about how and when the landlord was served, and returned to the call and indicated that the landlord was served on February 5, 2024 but does not know how the landlord was served.

The onus is on the tenant to prove that the landlord was served in accordance with the law, which states that an applicant must serve the respondent within 3 days of receiving the Notice of Dispute Resolution Proceeding from the Residential Tenancy Branch. In this case, the tenant received the documents for service on January 26, 2024, which is more than 3 days from February 5, 2024.

Since the tenant has not proved service, I dismiss the tenant's application in its entirety without leave to reapply.

The *Residential Tenancy Act* also states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an order of possession in favour of the landlord, so long as the notice given is in the approved form. The tenant has provided only 2 pages of a 3-page 10 Day Notice to End Tenancy For Unpaid Rent or Utilities, but I am not satisfied that the tenant provided a copy of that evidence to the landlord. Since I cannot consider the landlord's evidentiary material, I am not satisfied that any notice to end the tenancy given by the landlord was in the approved form. Therefore, I decline to grant an order of possession in favour of the landlord.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety 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 *Residential Tenancy Act*.

Dated: February 23, 2024

Residential Tenancy Branch