

DECISION

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the Act) for:

- an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) under sections 46 and 55 of the Act

It also dealt with the Tenant's Application for Dispute Resolution under the Act for:

- cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) under sections 46 and 55 of the Act.
- an order finding the tenancy ended due to a frustrated tenancy agreement under section 44 (1)(e) of the Act.
- an order for the Landlord to comply with the Act under section 62 (3) of the Act.
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The Tenants confirmed receipt of the Landlord's Proceeding Package and that they had enough time to review it.

Section 71 (2)(c) of the Act allows arbitrators to find that a document was sufficiently served.

Based on the Tenant's undisputed testimony, I find the Landlord sufficiently served the Proceeding Package using my authority under section 71(2)(c) of the Act.

The Tenant testified that they did not serve the Landlord with their Proceeding Package.

Under rule 3.5 of the Residential Tenancy Branch's Rules of Procedure, if an applicant cannot prove to the arbitrator's satisfaction that they have served their Proceeding Package an arbitrator may dismiss their application with or without leave to reapply.

As the Tenant did not serve their application on the Landlord, I dismiss all the Tenants' claims—except their request for their filing fee—with leave to reapply.

Service of Evidence

The Tenants confirmed receipt of the Landlord's evidence and that they had enough time to review it.

Based on the Tenants' undisputed testimony, I find the Landlord sufficiently served their Proceeding Package on the Tenants using my authority under section 71(2)(c) of the Act.

As the Tenants did not serve their evidence—per my authority under rule 3.17—I will not consider it.

Preliminary Issues

The Landlord did not attend the hearing, nor did they have a representative attend on their behalf.

Rule 7.3 of the Residential Tenancy Branch's Rules of Procedure grants arbitrators the ability to proceed with a hearing or dismiss an application with or without leave to reapply if a party does not attend. Rule 7.4 of the Rules of Procedure requires parties to attend the hearing to present their evidence.

The standard practice when only the respondent attends the hearing is to dismiss the application without leave to reapply. The rationale being that the Landlord has failed to meet their burden, and the application's service was confirmed.

In this case, however, what I find important is how the Landlord nearly met the evidentiary requirements to make a direct request. A direct request dispute resolution process that does not require a formal hearing. The only fact that the Landlord was unable to establish for their direct request was the time of month the Tenant had to pay the rent.

I do not find it would be just to hear an application on its merits in a participatory hearing without the applicant in a situation like this, where the applicant bears the burden to establish their claim. This is because the Landlord's evidence requires context to properly interpret, and rule 7.4 allows me the discretion not to attempt to interpret the Landlord's evidence if they do not attend to provide said context. On the other hand, it would also be unfair to set the Landlord back by making them re-serve another notice to end tenancy, when the evidence provided nearly meets the direct request threshold.

Therefore, I dismiss the Landlord's application with leave to reapply.

Conclusion

I dismiss the Landlord's application in its entirety with leave to reapply.

I dismiss the Tenants' following claims, with leave to reapply:

- cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) under sections 46 and 55 of the Act;
- an order finding the tenancy ended due to a frustrated tenancy agreement under 44(1)(e) of the Act; and
- an order for the Landlord to comply with the Act under section 62 (3) of the Act.

I dismiss the Tenant's request for authorization to recover the filing fee for this application from the Landlord under section 72 of the Act 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: August 17, 2024

Residential Tenancy Branch