

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
- a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the Monetary Order requested under section 38 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

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

- cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) and an extension of the time limit to dispute the 10 Day Notice under sections 46 and 66 of the Act
- cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) and an extension of the time limit to dispute the One Month Notice under sections 47 and 66 of the Act
- an order regarding the Tenant's dispute of a rent increase by the Landlord under section 41 of the Act
- an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided, under sections 27 and 65 of the Act
- an order for the Landlord to make repairs to the rental unit under sections 32 and 62 of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act

Landlord N.K., Landlord's Friend and Agent R.K. attended the hearing for the Landlord.

Tenant's Daughter and Agent T.K., Tenant's Adopted Son and Agent attended the hearing for the Tenant.

Preliminary Matters

The Residential Tenancy Branch Rules of Procedure Rule 3.1 states that the applicant must serve each respondent with the Notice of Dispute Resolution Proceeding, Respondent instructions, fact sheets provided by Residential Tenancy Branch, and applicant's evidence.

Rule 3.5 states that applicant must be prepared to demonstrate to the satisfaction of the director that each respondent was served with Notice of Dispute Resolution Proceeding and all other associated documents. If applicant fails to demonstrate, director may adjourn, dismiss with or without leave.

Service of the Landlord's Notice of Dispute Resolution Proceeding

In this case, the Landlord took a significant amount of time at the beginning of the hearing to recollect when and how they served the Notice of Dispute Resolution Proceeding (the Notice of Dispute) to the Tenant. Initially, the Landlord submitted that they served the Notice of Dispute on July 20, 2024. Shortly afterwards, the Landlord corrected themselves and submitted that it was served on August 1, 2024. After another short period, the Landlord corrected themselves again and submitted that it was served by email on July 21, 2024.

I note here that the Landlord uploaded a screenshot of an outgoing email addressed to the Tenant, however the screenshot does not clearly show the date or any attachments such as the Notice of Dispute or any associated application documents were included in the email message.

I find that the Landlord has not sufficiently demonstrated that the Tenant was served with the Notice of Dispute, and I exercise my discretion under Rule 3.5 to dismiss the Landlord's application, with leave to reapply.

Service of the Tenant's Notice of Dispute Resolution Proceeding

On examination of the Tenant's Cross Application, I find that the Tenant has not completed the declaration of service on the Residential Tenancy Branch Dispute Management System portal nor uploaded any documents to demonstrate proof of service.

Accordingly, I find that the Tenant has not sufficiently demonstrated that the Landlord was served with the Tenant's Notice of Dispute Resolution Proceeding, and I exercise my discretion under Rule 3.5 to dismiss the Tenant's application, with leave to reapply.

Conclusion

The Landlord's Application is dismissed, with leave to reapply.

The Tenant's Cross 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: August 19, 2024

Residential Tenancy Branch