DECISION

Introduction

The Tenant, in her application, seeks the following relief under the *Residential Tenancy Act* (the "*Act*"):

- an order pursuant to s. 46 cancelling a 10-Day Notice to End Tenancy for Unpaid Rent;
- a monetary order pursuant to ss. 33 and 67 to be paid back for the cost of emergency repairs;
- a monetary order pursuant to s. 67 for compensation or other money owed;
- an order under s. 65 for a rent reduction;
- an order under ss. 32 and 62 for repairs to the rental unit;
- an order pursuant to ss. 27 and 62 that the Landlord provide services or facilities required by the tenancy agreement or law; and
- an order pursuant to s. 62 that the landlord comply with the Act, Regulations, and/or the tenancy agreement.

The Landlord filed its own application seeking the following relief under the *Residential Tenancy Act* (the "*Act*"):

- an order of possession pursuant to s. 55 after issuing a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities;
- a monetary order pursuant to s. 67 for unpaid rent; and
- return of the filing fee pursuant to s. 72.

The Landlord's application was filed as a direct request but was scheduled for a participatory hearing in light of the Tenant's application.

A.C. attended as the Landlord's agent. The Tenant did not attend the hearing.

The Landlord's agent affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

Preliminary Issue – Disparity in the Named Parties in the Application

The Tenant, in her application, names herself, J.B., and A.B. as tenants. She names the agent A.C., N.B., and P.B. as the landlords. The Landlord, in its application, names a property management company and N.B. as landlord. It names M.B. as the sole tenant.

I have reviewed the tenancy agreement in this matter, which names the property management company as the landlord, does not include N.B. as the landlord, and lists M.B. as the sole tenant.

It bears some consideration that parties to disputes before the Residential Tenancy Branch are limited to landlords and tenants privy to the same tenancy agreement. At their core, our disputes are contractual in nature such that only parties to the agreement can rightly be considered as landlords and tenants.

I asked the agent who J.B. and A.B. were. The agent says they are the Tenant's minor children. I accept that neither J.D. nor A.B. are tenants under the tenancy agreement. I find they were improperly named in the Tenant's application given they are not listed as tenants under the tenancy agreement. As such, I have removed them from the style of cause as they are not party to the tenancy agreement. The minor children are not tenants.

I also asked the agent who the landlord was. The agent says the rental unit is owned by N.B. and P.B., though clarified that P.B.'s name is misspelt on the Tenant's application.

In this instance, I accept that the property management company is the Landlord under the tenancy agreement as it is the sole named entity as landlord. N.B. and P.B. are unnamed in the tenancy agreement and, as such, cannot rightly be considered as parties under the tenancy agreement. I also accept that A.C. is acting as an employee of the property manager, such that the agency between the owners and the property manager are with the management company.

As such, I further amend the style of cause to list the property management company as the Landlord.

Service of the Landlord's Application and Evidence

The Landlord's agent advises that the Landlord did not serve its application on the Tenant, believing that it was unnecessary to do so in light of the Tenant's application disputing the notice to end tenancy

I am told that evidence was served on the Tenant by way of email sent on September 3, 2024. The Landlord's agent testified that this was the evidence provided in response to the Tenant's application and that the Tenant responded to the service email on September 3, 2024 with evidence of her own.

Dealing first with the application, the Landlord has the obligation to serve it on the Tenant as per s. 59(3) of the *Act*. Service of an application is a cornerstone requirement of ensuring a procedurally fair process, namely that a respondent of notice of claims being made against them.

Though the Landlord filed their application under the direct request process, the matter had been scheduled for participatory hearing given the Tenant filed her application. Irrespective of this, the Landlord still had an obligation to serve its application. I find that it failed to do so.

As the Landlord has not served its application, I find that it should be dismissed as the Tenant had not notice of it. The claims for an order of possession and order for unpaid rent are dismissed with leave to reapply. However, I dismiss the claim for return of the filing fee without leave to reapply. The Landlord shall bear the cost of failing to serve its application.

Looking next to the Landlord's evidence, the Landlord served its evidence by way of email sent on September 3, 2024. I have reviewed the tenancy agreement in this matter, which lists the Tenant's email address as an address for service. I find that the Tenant's email was an approved method of service as per s. 43 of the Regulations.

Despite this, I find that the Landlord failed to serve its evidence on time. Rule 3.15 requires respondents to serve their evidence on applicants such that it is received not less than 7 days prior to the hearing. The Landlord was respondent on the Tenant's application. However, the evidence was sent on September 3, 2024, which was 7 days before the hearing.

The Tenant was not present at the hearing, such that I cannot confirm whether she received the Landlord's evidence on September 3, 2024. Though the Landlord's agent indicates that the Tenant responded to the email on September 3, 2024, I have no evidence of this, nor evidence of service of the original email serving the Landlord's evidence. I do not accept that the Tenant received the Landlord's evidence on September 3, 2024 based on the evidence on record.

Practically, this means I would have to deem receipt of the Landlord's evidence under s. 44 of the Regulations to include and consider it. However, deemed receipt of documents sent via email would occur three days after they are sent. That would place deemed receipt of the Landlord's evidence on September 6, 2024, which is late given the 7 day notice required by Rule 3.15 of the Rules of Procedure.

I find that the Landlord failed to serve its evidence within the proscribed time limit imposed Rule 3.15 as I cannot find it was served on the Tenant such that she had at least 7 days notice prior to the hearing. I find that it would be procedurally unfair to include or consider evidence for which the Tenant did not have proper notice. As such, I exclude the Landlord's evidence.

Service of the Tenant's Application

The Landlord's agent says that the Landlord did not receive the Tenant's application from the Tenant herself. The agent indicates that she discovered the Tenant filed her application after she was called by a staff member from the Residential Tenancy Branch, who told her that the Landlord's application could not proceed by way of direct request. The agent says that the Residential Tenancy Branch sent a courtesy copy of the Tenant's application to the Landlord.

I am cognizant of the requirement imposed by s. 59(3) of the *Act*. Despite issues of service of an application, I do not generally find this to be problematic if a respondent has received notice of the application indirectly from the Residential Tenancy Branch and is prepared to proceed at the hearing by stating as much. The service requirements are intended to ensure procedural fairness. However, if a respondent, who is the party prejudiced by non-service, indicates a willingness to proceed, they cannot rightly be said to be prejudiced as they consent to moving forward.

In this instance, however, I find that the Tenant's application must be dismissed with leave to reapply in its entirety. Even if I were to overlook the Tenant's failure to serve the application, I have not been provided with a copy of the notice to end tenancy that can be admitted into evidence.

I note that the if a notice to end tenancy is enforceable, I must make a finding it complies with s. 52 of the *Act*, which sets the form and content requirements. In this instance, a finding under s. 52 of the *Act* is required if an order of possession is granted under s. 55(1) of the *Act* or an order for unpaid rent under s. 55(1.1) of the *Act*.

The Tenant has provided a copy of a notice to end tenancy in her evidence to the Residential Tenancy Branch, though this was not served on the Landlord. Similarly, the Landlord did provide another notice to end tenancy to the Residential Tenancy Branch on its application. I note that the two notices to end tenancy do not correspond with each other. I further note that I was told by the agent that the only the evidence in response to the Tenant's application was served, such that the notice to end tenancy it did provide to the Residential Tenancy Branch, which was on its own application, was not served at all.

Simply put, the lack of notice to end tenancy means I cannot find one way or the other whether the notice to end tenancy was properly issued. In light of the fact that the application was not served, I find that it would be inappropriate to proceed on the claim and doing so would be pointless in any event since there is no notice to end tenancy in evidence before me.

Looking at the Tenant's other claims, they fail to provide particulars for why they filed. They are alternately described by the Tenant in her application as "Dududddhdhdhfudisj Jzjxjjx" or "Xhxxjxhshsusisicjvjhdsh" and so on. The Tenant's other claims are, in my view, completely unintelligible.

Section 59(2)(b) of the *Act* requires an application to include "full particulars of the dispute" and failure to do so may permit the director to refuse to accept the application as per s. 59(5) of the *Act*. To be clear, the obligation to provide particulars is tied to the underlying requirement to give a respondent notice of the claim. If the application cannot clearly specify the basis for which the applicant is seeking the relief, the respondent cannot rightly be said to understand what it is responding to.

I find that even if the Tenant's application had been served, it failed to disclose any intelligible particulars. I refuse to accept those claims in any event.

On a whole, I find that the Tenant's application should be dismissed, in its entirety, with leave to reapply both because it had not been served and cannot be adjudicated upon in any event.

Conclusion

I dismiss the Landlord's claims under ss. 55 and 67 with leave to reapply. The Landlord's claim for its filing fee is dismissed without leave to reapply.

The Tenant's application is 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 Act.

Dated: September 10, 2024

Residential Tenancy Branch