

DECISION

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Tenant applied 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

The Landlord applied for:

- an Order of Possession based on the 10 Day Notice under sections 46 and 55 of the Act
- a Monetary Order for unpaid rent under section 67 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

Tenant S.C. attended the hearing for the Tenant.

No one attended the hearing for the Landlord. I left the teleconference connection open until 1:30 P.M. to enable the Landlord to call into the teleconference hearing scheduled for 1:00 P.M.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into the teleconference.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

Tenant S.C. stated that she did not serve her application on the Landlord. I find that the Tenant did not serve the Proceeding Package in accordance with section 89(1) of the Act.

Tenant S.C. confirmed receipt of the Landlord's application. Therefore, I find the Landlord's application properly served on the Tenant using my authority under section 71(2) of the Act.

Service of Evidence

Tenant S.C. stated that she did not submit any evidence to the RTB or the Landlord.

Tenant S.C. confirmed receipt of the Landlord's evidence. Therefore, I find the Landlord's evidence properly served on the Tenant using my authority under section 71(2) of the Act.

Preliminary Matters

Landlord's Absence

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application, with or without leave to reapply pursuant to *Residential Tenancy Branch Rules of Procedure* 7.3.

I conducted the dispute resolution hearing in the absence of the Landlord.

Rule of Procedure 6.6 states that the landlord has the onus of proof to establish, on a balance of probabilities, that the notice issued to end tenancy is valid. This means that the landlord must prove, more likely than not, that the facts stated on the notice to end tenancy are correct.

Since the Landlord did not attend the hearing to make submissions on why the 10 Day Notice was filed, I find that the Landlord has failed to discharge its onus of proving the validity of the 10 Day Notice.

Accordingly, I dismiss the Landlord's Application without leave to reapply.

Dismissal of Tenant's Application

Policy Guideline #12 states that failure to prove service may result in the matter being dismissed, with or without leave to reapply. Adjournments to prove service are given only in unusual circumstances.

The purpose of serving documents under the Legislation is to notify the parties being served of matters relating to the Legislation, the tenancy agreement, a dispute resolution proceeding or a review. Another purpose of providing the documents is to allow the other party to prepare for the hearing and gather documents they may need to serve and submit as evidence in support of their position.

I find the Tenant has not served the landlord with the application for dispute resolution.

Tenant S.C. advised that she moved out of the rental unit on August 16, 2024 and the Landlord took back possession of the rental unit on that date.

Based on the Tenant's testimony, I find that the Landlord has since taken back possession of the rental unit.

As the Landlord has now taken back possession of the rental unit, I find the issue of cancelling the 10 Day Notice to be moot.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss this application for dispute resolution.

For the above reasons, I dismiss the Tenant's application without leave to reapply.

Conclusion

The Tenant's application is dismissed in its entirety, without leave to reapply.

The Landlord'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 13, 2024

Residential Tenancy Branch