



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR OLC LRE**

Introduction

This hearing was convened by way of conference call in response to an application for dispute resolution (“Application”) filed by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”). The Tenant applied for:

- an order to cancel Ten Day Notice to End Tenancy for Nonpayment of Rent and/or Utilities dated September 16, 2022 (“10 Day Notice”) pursuant to section 46;
- an order for the Landlord to comply with the Act, *Residential Tenancy Regulations* (“Regulations”) and/or the tenancy agreement pursuant to section 62; and
- an order to suspend or set conditions on the Landlord’s right to enter the rental unit pursuant to section 70.

The Tenant did not attend this hearing scheduled for 9:30 am. I left the teleconference hearing connection open for the entire hearing, which ended at 9:52 am, in order to enable the Tenant to call into this teleconference hearing. The Landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding (“NDRP”). I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

Although the Tenant was not present at the hearing, KL acknowledged receipt of the NDRP and the Tenant’s evidence (“NDRP Package”). I find that the Landlord was served the NDRP Package in accordance with the provisions of section 89 of the Act.

Preliminary Matter – Effect of Non-Attendance by Tenant

Rules 7.1 and 7.3 of the *Residential Tenancy Branch Rules of Procedure* (“RoP”) state:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of the party, or dismiss the application, with or without leave to re-apply.

Given the Tenant did not attend the hearing within 10 minutes of its commencement, the Application is dismissed without leave to reapply.

Rule 7.4 of the RoP states:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party’s agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

As the Tenant did not participate in the hearing, her evidence was not presented as required by Rule 7.4 of the RoP. As such, I will not consider any evidence submitted by the Tenant in advance of the hearing when adjudicating the Application.

Rule 6.6 of the RoP states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For

example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Notwithstanding the Application has been dismissed, Rule 6.6 provides the Landlord bears the burden of proof it is more likely than not that 10 Day Notice is valid. Based on the foregoing, the Landlord must meet this burden even though the Tenant did not participate in the hearing.

Preliminary Matter – 10 Day Notice Does Not Comply with Form and Content Requirements

Sections 52, 55(1) and 55(1.1) state:

- 52 In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
 - (e) when given by a landlord, be in the approved form.
- 55(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, *the director must grant to the landlord an order of possession* of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
 - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

- (1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, *the director must grant an order requiring the payment of the unpaid rent.*

[emphasis in italics]

At the outset of the hearing, the Landlord stated she went to the rental unit on July 7, 2022 and discovered the Tenant had abandoned the rental unit. The Landlord stated she changed the locks on the rental unit when found the Tenant had removed her personal possessions. As I have dismissed the Application, I am required to determine whether the Landlord is entitled to an Order of Possession and an order for unpaid rent pursuant to sections 55(1) and 55(1.1) of the Act. As the Tenant has vacated the rental unit, the Landlord is not entitled to an Order of Possession. However, section 55(1.1) of the Act requires that I consider whether the Landlord is entitled to a monetary order for unpaid.

The Landlord stated the rental unit occupied by the Tenant was a different rental unit than the rental unit stated on the 10 Day Notice. I also noted the Form RTB-30 used by the Landlord was an obsolete form of RTB-30. As such, I find the 10 Day Notice did not comply with the form and content requirements of section 52 of the Act. Based on the foregoing, I find the 10 Day Notice was not effective. As such, I cancel the 10 Day Notice. I find the Landlord is not entitled to a monetary order for the rental arrears claimed by the Landlord to be owing by the Tenant under section 55(1.1) of the Act. The Landlord has the option of making a new application for dispute resolution to seek a monetary order for any rental arrears that may be owing to her by the Tenant.

Conclusion

The Application is dismissed without leave to reapply.

The 10 Day Notice is cancelled as it does not comply with the form and content requirements of the Act.

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: November 2, 2022

Residential Tenancy Branch