



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR

Introduction

The Tenant seeks an order pursuant to s. 46 of the *Residential Tenancy Act* (the “*Act*”) cancelling a 10-Day Notice to End Tenancy (the “10-Day Notice”).

N.H. appeared as the applicant Tenant and was joined by her spouse K.H.. The Landlord did not attend the hearing, nor did someone attend on their behalf.

The parties 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.

Dismissal of the Application

At the outset of the hearing, the Tenant and K.H. advised that the Landlord had not been served with the Notice of Dispute Resolution. I was further told that the 10-Day Notice was served via registered mail and received on March 8, 2023 and that it was issued due to an issue with Tenant’s bank. In any event, I am further told the issue was resolved such that rent was paid on the day the Tenants received the 10-Day Notice.

Pursuant to s. 46(4) of the *Act*, where a tenant pays overdue rent within 5 days of receiving a 10-Day Notice to End Tenancy, the notice is automatically cancelled.

The main issue is that the application has not been served. Given the explanation from the Tenant and K.H., I understand why they did not do so. However, I decline to make a finding that the 10-Day Notice is automatically cancelled under s. 46(4) of the *Act* as the Landlord was not properly given notice of the application.

As the Tenant's failed to serve their application, I dismiss their application. I do so without leave to reapply given the explanation provided to me by the Tenants. I make no findings on the merits of the application.

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: April 14, 2023

Residential Tenancy Branch