Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

<u>Dispute Codes</u>   CNR, MNRT, RP, PSF, OLC, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), this hearing dealt with the Tenant's application to cancel a 10-Day Notice for Unpaid Rent and Utilities (Notice), as well as requests that the Landlord make emergency repairs, a request for reimbursement for the cost of repairs made, that other repairs be made to the rental unit, that the Landlord provide services, and a request for reimbursement of the filing fee.

Preliminary Matters

The Tenant did not appear for the scheduled hearing. The Landlord advised that they had last spoken with the Tenant approximately two months ago, at which time the Tenant informed them that he was moving, but they did not know if the Tenant remained in the rental unit.

The Landlord further stated that the Tenant had not served the dispute resolution packet on him (the Branch had contacted the Landlord by email regarding the date and time of the dispute resolution hearing). The Landlord was completely unaware of the Tenant's allegations regarding the emergency repairs and requested repairs.

Rule of Procedure 3.1 requires that the applicant, within three days of the Notice of Dispute Resolution Proceeding package being made available, serve each respondent with the packet together with any other evidence submitted by the applicant. Methods of appropriate service of the dispute resolution packet are set forth in section 89(1) of the Act. Proof of service of the dispute resolution packet from the Tenant was not provided to the Branch.

I find that the Tenant has failed to serve the Landlord with the dispute resolution packet as required by Rule 3.1 and as a result the application is dismissed without leave to reapply. Nevertheless, the Landlord's 10-Day Notice to End Tenancy will be adjudicated.

Issue to be Decided

Is the Landlord's 10-Day Notice valid?

Background and Evidence

The Landlord testified that he purchased the rental unit approximately 2-1/2 years ago and was already occupied by the Tenant and there was not written rental agreement. Rent was $1,300.00 per month due on the first day of each month. The Landlord stated that during the course of the tenancy, the Tenant had paid rent sporadically and since September 2022 had only made only one partial payment toward rent.

The Landlord issued the Notice on April 19, 2023 for unpaid rent as of April 1, 2023 in the amount of $11,700.00. The Landlord testified that the Notice was personally served on the Tenant by a process server. The Notice was signed by the Landlord but did not provide the move-out (effective) date. A copy of the Notice was submitted to the Branch by the Tenant as part of his application.

Analysis

Section 52 of the Act sets forth the requirements for a valid notice to end a tenancy. It provides that the Notice must:

- be signed and dated by the landlord or tenant giving the notice;
- give the address of the rental unit;
- state the effective date of the notice;
- state the grounds for ending the tenancy (with limited exceptions pertaining to a tenant's notice); and,
- when given by the landlord, be in the approved form.

In the event the effective date of the notice is in error, section 53 of the Act deems a correct date. However, this only applies when the Notice sets forth a date, and section 53 does not apply when the Notice provides no effective date.

In this case, the Notice meets all the criteria of section 52, except it does not provide an effective date. Therefore, under section 52 I find the Notice is invalid.

Conclusion

The Tenant's application is dismissed without leave to reapply for failure to serve the dispute resolution packet on the Landlord. The Notice fails to comply with the Act and is cancelled.

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: June 12, 2023

Residential Tenancy Branch