Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sutton Group-Proact Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR

Introduction and Preliminary matters

This hearing was convened as a result of the tenant's successful application for review consideration regarding the Decision dated December 10, 2014, in which the landlord was granted an order of possession for the rental unit due to unpaid rent and a monetary order for unpaid rent based upon their application for dispute resolution under the direct request process.

The tenant applied for a review of that Decision based upon their contention that they had evidence that the Decision of December 10, 2014, was obtained by fraud.

The tenant was granted a review hearing in a Decision by another Arbitrator dated February 12, 2015, and the Decision of December 10, 2014 was suspended pending the review hearing.

At this review hearing, the landlord's agent (hereafter "landlord") and tenant "JC" attended. The tenant submitted that she had not received a copy of the Decision of February 12, 2015, from her application for review consideration, as she has not had mail service since late October 2014, as their mailboxes at the residential property, or a strata building, were vandalized. The tenant also denied receiving any documents from the landlord, such as his original application for dispute resolution or a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"). This claim was the basis of her successful application for review consideration.

The landlord submitted that he had not received notice of this hearing, the Decision of February 12, 2015, or the tenant's evidence as ordered by the reviewing Arbitrator in that Decision. The landlord submitted further that he learned of this hearing with his enquiry to the Residential Tenancy Branch ("RTB"); however, he was not allowed a copy the documents when he attended the Branch office, according to the landlord.

At the hearing on March 17, 2015, the tenant submitted that she did not understand the purpose of the hearing, as she believed the hearing was to review her evidence that the original Decision of December 10, 2014, was obtained by fraud. The tenant pointed out that she was granted a review hearing, nothing else was explained to her, and she did not understand that the purpose of this hearing was to consider the landlord's original

application for dispute resolution. The tenant was advised that the hearing would proceed on the landlord's original application seeking a monetary order for unpaid rent and an order of possession for the rental unit due to unpaid rent, and the tenant again renewed her argument that she had never received that application.

At this point, after hearing further statements from the parties, I determined that this hearing should be adjourned. Section 6.3 of the Dispute Resolution Rules of Procedure (Rules) gives the Arbitrator authority to adjourn the dispute resolution proceeding to a later time on the Arbitrator's own initiative.

Under Section 6.4 (c) I considered whether or not an adjournment was required to provide a fair opportunity for a party to be heard by all parties. As both parties claimed not to have received all appropriate and relevant documents for this hearing or pertaining to the landlord's original application for dispute resolution, I determined that an adjournment was necessary.

After a review of this Arbitrator's hearing schedule, it was determined that a hearing opening was available in the same week, which was appropriate as the issues concerned a potential end of this tenancy. The parties were informed that whether or not they received a notice of the adjourned hearing, they were to use the same dial-in codes for the next hearing, and both agreed. Further, the parties agreed that the landlord would attend the RTB office to obtain relevant copies of the documents, such as the landlord's original application and the tenant's application for review consideration, and the landlord would hand deliver a copy of the documents to the tenant the following day, at 9:00 a.m. The landlord and tenant were both in attendance at the reconvened hearing.

At the reconvened hearing, neither party raised an issue regarding the receipt of the documents; however, the tenant again stated she did not understand that the purpose of the hearing would be to consider the landlord's original application for dispute resolution, despite that explanation at the hearing on March 17, 2015. The tenant further submitted that she had faxed evidence to the RTB for the reconvened hearing; however, that evidence was not before me at the hearing.

The tenant was informed that the hearing would proceed on the landlord's application for dispute resolution and the hearing did proceed. The tenant was informed that I would not make or issue a decision in this matter until I had received her documentary evidence, and that was the case, as I did in fact receive the tenant's evidence directly after the hearing.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent and a monetary order for unpaid rent?

Background and Evidence

The undisputed evidence shows that this tenancy began on August 1, 2013 and the monthly rent is $1500.00, due on the first day of the month.

In support of their application, the landlord submitted the following-

- The tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated November 5, 2014, on that date, by hand delivery. The hand delivery of the Notice was witnessed by their witness, "BD".

- The Notice listed total unpaid rent of $8700.00, due as of November 1, 2014.

- The tenant has not paid rent for November and December 2014, or January, February or March 2015.

- That the tenants were each served notice of their application for dispute resolution under the direct request process on November 27, 2014, by registered mail. The landlord was informed by the RTB that as long as service was provable, there would be no problem with going forward on their application.

- The tenants were also served their application for dispute resolution under the direct request process by attaching the documents to the tenant's door, although there was not a witness to this service.

- The landlord confirmed the strata corporation has an issue with the mailboxes for the building.

Landlord's witness-

- BD confirmed his written statement issued with the landlord's application, that he witnessed the landlord hand deliver a copy of the Notice to the tenant on November 5, 2014.

In response to the landlord's application, the tenant submitted the following-

- The tenant denied owing as much rent as listed on the Notice and her own calculations show a different amount.

- The parties had been in discussion about continuing the tenancy, and had agreed that if the tenant paid $6800.00, the tenancy would continue. The landlord was paid that amount on January 6, 2015.

- The tenant denied receiving the Notice, as she was in the hospital on November 5, 2014, and denied receiving the landlord's application, as it was sent by

registered mail and she has not been able to receive any mail at her address since October 2014.

Tenant's witness-

- The tenant's witness is the tenant's mother and was present in December when an agreement was made to continue the tenancy if a payment of $6800.00 was made.

- The tenant could not meet the landlord's agent on December 23, 2014, as agreed, but the payment was made on January 6, 2015.

Analysis

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

As the tenants were granted this hearing based upon their contention in their application for review consideration that they did not receive the landlord's 10 Day Notice or their application, the issues now for consideration at this hearing on the landlord's original application was to establish whether the landlord properly served the tenants with their 10 Day Notice and their application in order to be successful.

The direct request procedure, as was the case here with the landlord's application, is based upon written submissions only. One of the documents that must be submitted in order to qualify for and succeed with the direct request procedure is proof of the date and manner in which the landlord served the tenants with a 10 Day Notice. In the case before me, the tenant stated that she was in the hospital on the date the landlord claimed to have hand delivered the 10 Day Notice; however, there was no independent evidence of this submission. I therefore accept the landlord's evidence, corroborated by his witness, that the tenants were properly served by hand delivery with the 10 Day Notice on November 5, 2014, in compliance with section 88 of the Act.

Another document required to be submitted with the landlord's application for dispute resolution under the direct request process is proof that the tenants were served with the landlord's application.

Section 89(1) of the Act requires that an application for dispute resolution be served upon the respondent (the tenants in this case) by leaving it with the person, by sending a copy by registered mail to the address at which the person resides or if a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant. Under subsection (2), service of the application is also allowed by attaching the documents to the tenant's door, if only an order of possession for the rental unit is requested.

After considering the evidence submitted, I find the landlord submitted insufficient evidence to prove that the tenants were served with the landlord's application for dispute resolution by registered mail. In making this finding, I considered that the landlord admitted that there was an issue with the mailboxes in the strata building, not clearly defined, and the tenant denied receiving the application. I therefore could not conclude by the landlord's evidence that the tenants were ever made aware of, or at least were notified, that they were sent registered mail or that it was available for pick-up. As the landlord confirmed that there was an issue with the mailboxes, I would expect the landlord to serve the application in another way, such as hand delivery, with a corroborating statement, to provide sufficient proof.

As described above, I therefore find the landlord's application under the direct request proceeding to be deficient as required by the Act and I therefore I dismiss the landlord's application with leave to reapply. Leave to reapply does not extend any applicable time limitation deadlines.

The landlord is also at liberty to issue another Notice to the tenants.

As I have dismissed the landlord's application for dispute resolution under the direct request process, I set aside the Decision and orders of December 10, 2014, of the original Arbitrator granting the landlord's application for an order of possession for the rental unit and a monetary order for unpaid rent. The Decision and orders of December 10, 2014, in favour of the landlord are now of no force or effect.

Conclusion

The landlord's application for dispute resolution under the direct request process is dismissed, with 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 *Residential Tenancy Act*.

Dated: March 23, 2015

Residential Tenancy Branch