



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act ("Act"). The landlord applied for an order of possession for the rental unit pursuant to a Notice to End Tenancy ("Notice").

The landlord's agents (hereafter "landlord") attended; the tenant did not attend the telephone conference call hearing.

The landlord provided evidence that they served the tenant with their application for dispute resolution and notice of hearing by registered mail on May 14, 2015. The landlord supplied the Canada Post receipt showing the tracking number.

I will address my findings on the landlord's service of their application further in this Decision.

The landlord was provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

The tenant, although not attending the hearing, submitted documentary evidence in advance of the hearing. The landlord confirmed they did receive the tenant's evidence and I have also reviewed this evidence.

I have reviewed all oral and written 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.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit?

Background and Evidence

The landlord's evidence was that their company purchased the residential property, which is a multi-unit, hotel type accommodation, in October 2014. With the purchase of the building, there were no written tenancy agreements provided to them.

The submitted that the tenant's monthly rent was \$600.00 and that he failed to pay rent for May 2015.

The landlord stated that they served the tenant with a Notice to end the tenancy by attaching the document to the tenant's door. Into evidence, the landlord submitted a signed, witnessed Proof of Service of the Notice, which states that the landlord served the tenant with the Notice by placing it under the door/mailbox, not by attaching it to the door.

The landlord supplied a copy of the Notice, which was on an out-of-date form, provided 11 years ago by the Residential Tenancy Branch ("RTB") for landlords' use. However, the current form offered by the RTB was most recently updated in April 2015.

As to the service of their application for dispute resolution, the landlord agreed that a landlord's agent signed for the registered mail, as any mail arrives at the hotel/residential property for distribution into all tenants' mail slots at the front desk, as was the case here.

The tenant's evidence states that he never received the Notice as claimed by the landlord or the landlord's application until a landlord's agent handed him the application, evidence containing the Notice, and notice of hearing on May 22, 2015.

Analysis

Section 46(1) of the Act states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice and such notice is in compliance with Section 52 of the Act, requiring among other things, that the notice be on the approved form.

In this case, I do not find the landlord used the current form approved by the RTB; however, under section 68 of the Act, if a notice to end a tenancy does not comply with section 52, the director may amend the notice if satisfied that the person receiving the notice knew, or should have known, the information that was omitted from the notice, and it is reasonable to do so.

In considering whether it would be reasonable to amend the Notice in this case, an examination of the out-of-date form used by the landlord to serve upon the tenant shows that this form combines information on three different notices ending a tenancy, a 10 Day Notice, a 1 Month Notice, and a 2 Month Notice, and is a 4 page document.

In reviewing the current 10 day Notice form, this form is 2 pages, contains only information relevant to the issue listed, unpaid rent or unpaid utilities, and also contains very specific

guidelines to the tenant. For instance, on the out-of-date form a tenant is informed that they “have the right to dispute the notice within 5 days under section 46 of the Residential Tenancy Act”.

On the current form, a tenant is advised that they have 5 days to file an application for dispute resolution with the RTB in dispute of the Notice. I find these instructions to be clear and concise, whereas I find the language on the out-of-date form used by the landlord, containing information on 3 different types of Notices, to be vague and non-instructive.

I am therefore not willing to amend the landlord’s Notice and I hereby set it aside for failure to comply with the Act, pursuant to section 68(2)(b) of the Act.

I also find that the landlord failed to serve the tenant with their application as required by section 89(1) of the Act, as the intent of delivery by registered mail is so that there is information as to whether the recipient is notified of the mail. In this case, the evidence shows that the tenant did not receive notice of the registered mail, as the landlord’s agent signed for the mail.

As I have set aside the landlord’s Notice to end the tenancy, it is now cancelled and of no force or effect. The tenancy continues until it may otherwise end under the Act.

The landlord is at liberty to issue the tenant a notice to end the tenancy which is compliant with the Act, and they have acknowledged they are now aware of the current form.

Conclusion

The Notice to end the tenancy issued by the landlord is set aside and cancelled, and the tenancy continues until it may otherwise end under 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: June 29, 2015

Residential Tenancy Branch

