



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Landlord: OPUM-DR  
                             Tenant: CNR, OLC, RR

### Introduction

This participatory hearing was convened after the issuance of an October 05, 2017, interim decision by an Adjudicator. The Adjudicator determined that the Landlord's Application for Dispute Resolution (Landlord's Application) could not be considered by way of the Residential Tenancy Branch's (RTB) direct request proceedings, as had been originally requested by the landlord. Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear this matter. The Adjudicator reconvened the landlord's application to a participatory hearing for the following:

- an Order of Possession for unpaid rent pursuant to sections 46 and 55; and
- a Monetary Order for unpaid rent pursuant to section 67.

The tenants, upon receiving the Notice of Direct Request package on October 08, 2017, filed a Tenants' Application for Dispute Resolution (Tenants' Application) which was joined to this participatory hearing.

The tenants sought:

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

The landlord's agent (landlord), the tenants and the tenants' advocate attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The advocate stated that she would be primarily speaking on behalf of the tenants in this matter.

At the outset of the hearing the tenants, through their advocate, withdrew the portion of the Tenants' Application for orders for the landlord to comply with the *Act* and to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided.

The Tenants' Application for orders for the landlord to comply with the *Act* and to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided is withdrawn.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The landlord testified that the notice of this adjourned hearing was sent to each tenant by way of registered mail on October 12, 2017. Both tenants confirmed receiving these packages. In accordance with section 89 of the *Act*, I find that the tenants were duly served with the notice of this adjourned hearing.

The landlord testified that the Landlord's Application and supporting evidence was served to each tenant by way of registered mail on October 03, 2017 as a part of the direct proceeding package. The advocate confirmed the tenants received the Landlord's Application with supporting evidence. In accordance with sections 88 and 89 of the *Act*, I find the tenants were duly served with the Landlord's Application and supporting evidence.

The landlord acknowledged receiving the Tenant's Application, which was left with an agent of the landlord on October 10, 2017. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Tenants' Application.

Tenant J.T. testified that their evidence was left with an agent of the landlord, the site manager, on October 30, 2017. Tenant J.T. further testified that Tenant E.L. was a witness to this service. The landlord stated that he did not have the tenants' evidence before him and that the site manager did not tell him about this evidence. In accordance with section 88 of the *Act*, I find the landlord is duly served with the tenants' evidence and I will consider it.

The landlord entered into evidence a signed Proof of Service document attesting to the fact that the 10 Day Notice was posted to the door of the rental unit on September 02,

2017. There is no witness signature on this Proof of Service document to confirm service.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent?

Background and Evidence

The landlord gave written evidence that this tenancy began on May 13, 2017, with a monthly rent of \$1,100.00 due on the first day of the month. The landlord testified that they continue to retain a \$550.00 security deposit from the tenants in trust.

A copy of the signed 10 Day Notice, dated September 02, 2017, with an effective date of September 12, 2017, was included in the landlord's evidence.

The advocate disputed service of the 10 Day Notice and testified that the tenants did not receive it in the manner indicated on the Proof of Service form. The advocate stated that there is no witness signature on the Proof of Service form to confirm service of the 10 Day Notice to the tenants.

Tenant J.T. testified that he had a verbal arrangement with the site manager of the residential premises and he only became aware that a 10 Day Notice was issued when they received the direct request proceeding package on October 08, 2017. Tenant J.T. testified that upon receiving the direct request proceeding package on October 08, 2017, the tenants filed their Tenants' Application on October 10, 2017. Tenant J.T. testified that the September 2017 rent has been paid and that they just have to pay the November 2017 rent but, with the site manager absent, they do not know who to pay the November 2017 rent to.

The landlord submitted that he is very sure that the site manager served the 10 Day Notice as indicated on the Proof of Service document. The landlord further submitted that the site manager never informed the landlord of any verbal arrangement but he is very sure that the site manager would never enter into an arrangement with a tenant without informing him. The landlord admitted that the site manager is not available to confirm service of the 10 Day Notice as they are in another country at the present time.

The landlord informed the tenants that they could pay the November 2017 rent at an office in a hotel owned by the owners of the residential premises and that a receipt would be provided upon payment of the rent. The instructions given to the tenants for payment of the November 2017 rent are detailed on the title page at the beginning of this decision.

### Analysis

Section 88 of the *Act* allows for service of the 10 Day Notice by posting it to the door of the rental unit, however; when there is a question of whether documents have been served, the burden of proof falls to the party who served the documents.

Section 71 (2)(a) of the *Act* stipulates that the director may order that a document must be served in a manner the director considers necessary, despite sections 88 and 89 of the *Act*.

I find that this hearing was convened due to the Adjudicator's finding that service of the 10 Day Notice to the tenants is not proven. The Adjudicator found that there is no witness who signed the Proof of Service document to confirm service of the 10 Day Notice, as required for the direct request process, pursuant to section 71 (2)(a) of the *Act*.

I find that the site manager, who signed the Proof of Service document, was not available as a witness at the hearing to provide affirmed testimony confirming their service of the 10 Day Notice to the tenants, in accordance with section 88 of the *Act*. I further find that the landlord was not a witness to service of the 10 Day Notice to the tenants and is not able to provide affirmed testimony first-hand knowledge of service of the 10 Day Notice to the tenants.

I accept Tenant J.T.'s affirmed testimony that the tenants only became aware of the 10 Day Notice upon receiving the direct request proceeding package on October 08, 2017, which prevented them from disputing the 10 Day Notice within the timeframe allowed by section 46 (4)(b) of the *Act*.

Based on the evidence and affirmed testimony before me, I find that the landlord has *not* shown sufficient grounds to validate the 10 Day Notice and obtain an end to this tenancy.

For this reason, the Landlord's Application is dismissed. The 10 Day Notice of September 02, 2017 is cancelled and is of no force or effect.

Conclusion

The Landlord's Application is dismissed, without leave to reapply.

The tenants are successful in their Tenants' Application.

The 10 Day Notice of September 02, 2017 is cancelled and is of no force or effect.

This tenancy continues until it is ended in accordance with 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 17, 2017

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Residential Tenancy Branch