



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute codes OPU FF

Introduction

This review hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. The landlord's agent acknowledged receipt of the review consideration decision and Notice of this review hearing.

This review hearing was scheduled pursuant to the *Residential Tenancy Act* (the Act) in response to a successful application filed by the tenants for review of a decision dated October 11, 2018. In the original decision issued by way of a Direct Request Proceeding in response to the landlord's application, the landlord was granted an order of possession for unpaid rent and utilities and a monetary order in the amount of \$100.00 for recovery of the filing fee.

The original decision and orders were subsequently suspended by way of a review consideration decision dated October 22, 2018 pending the outcome of this review hearing.

Issues

Should the original decision and orders dated October 11, 2018 be confirmed, varied or set aside?

Background and Evidence

One of the issues raised by the tenants in their review consideration application was that they were not served with any documents by the landlord other than the Notice of Direct Request Proceeding. On page #4, paragraph 5 of the review consideration decision, the Arbitrator makes the following finding and requirement for service of documents prior to this review hearing:

Since the Tenant did not receive the original supporting documents attached to the direct request proceeding of the Landlord, I order the Landlord to serve the

Tenant with supporting evidence within 3 days of the date on which the Tenant serves them with the notice of hearing.

The tenant testified that a copy of the review consideration decision including their review application and supporting evidence was served to the landlord by registered mail on October 24, 2018 and received by the landlord on October 29, 2018. The tenants submitted a registered mail receipt and tracking number as proof of service to the landlord.

At the outset of the hearing, the landlord's agent testified that all documents to be relied on for this hearing were sent to the tenants by registered mail on October 5, 2018. The landlord testified that this included the Notice of Direct Request Proceeding, 10 Day Notice, a copy of the tenancy agreement, a demand letter for unpaid utilities and a monetary order worksheet.

The landlord's agent testified that on the morning of September 17, 2018 she personally served the tenant with the 10 Day Notice in person at their workplace as the two of them work together at the same real estate office. The landlord testified the tenant left in a rush and did not take the 10 Day Notice with her so the landlord's agent and the property manager again served the tenant with the 10 Day Notice by placing a copy in the tenants mailbox later this same day. The 10 Day Notice indicates an outstanding rent amount of \$10,800.00 plus an unpaid utilities amount of \$6,142.73.

The landlord's agent testified that the landlord could not pin down exactly which three months the tenant owed back rent for. The landlord's agent noted these three months as September 2018, November 2018 and December 2017 in the monetary order worksheet. The landlord's agent testified that the tenant was constantly bouncing and replacing cheques so it was difficult to track which months were outstanding. The landlord did not submit any account reconciliation or ledger to support the claim that the tenants were three months behind in rent payments. The landlord's agent testified that the tenant was provided with a written demand letter and a copy of the outstanding utilities bill in person on July 30, 2018. Again this was allegedly done at the real estate office in which they both work. The landlord submits the lease clearly shows the tenants are responsible for these utilities as they agreed to and initialled this requirement in the lease.

The landlord's agent testified that the tenants did not pay any outstanding rent or utilities as indicated in the 10 Day Notice. The landlord's agent acknowledged the tenant has paid rent in full and on time for the past five months. The landlord's agent further

submits that the landlord really wants the house back due to the past payment record and the landlord wants to move back into the unit.

The tenants disputed receiving any documents from the landlord other than the Notice of Direct Request Proceeding. The tenants submit that the one of the grounds the review was applied for and granted was that they did not receive any documents. The tenants further dispute that were ever served with a 10 Day Notice or a demand letter for unpaid utilities. The tenants also submit that the unpaid rent as claimed for by the landlord pertaining to September 2017, November 2017 and December 2017 has been paid in full and the tenants provided bank statements in support. The tenants testified that their copy of the lease agreement does not require any payment of city water and sewer utilities. The tenants submit that they were not served with any of the landlord's documents so did not know the landlord's copy of the tenancy agreement was different.

Towards the end of the hearing, the landlord's agent was again questioned why she did not follow the instructions to re-serve documents as ordered in the review consideration decision. The landlord's agent then testified that on November 13, 2018 she and the property manager served all documents to the tenants by placing a copy in the tenants' mailbox.

The tenants disputed receiving any documents in the mailbox on or after November 13, 2018.

Analysis

In the Review Consideration Decision, the landlord was provided clear instructions to re-serve the tenants with a copy of all supporting documents and evidence that were to be included with the Notice of Direct Request Proceeding within three days of receiving the decision.

The landlord did not re-serve the tenants with all supporting documents within three days of receipt of the decision on October 29, 2018. The landlord's agent allegedly placed a copy of these documents in the tenants' mailbox on November 13, 2018 which is 15 days after receiving the decision. The tenant still disputed receiving the documents in this manner.

The onus is on the landlord to prove that documents were served. I find that given that one of the issues in question in the original decision was the service of documents, the landlord should have been more conscientious as to which method of service would best prove the documents were served to the tenants. I find it would have been wiser for the

landlord to send these documents by registered mail and to provide supporting proof of which documents were included in the registered mail package. In either event, the landlord clearly failed to follow the instructions in the review decision and serve these documents within three days of receiving the decision.

I find the landlord failed to sufficiently prove the tenants were served with the supporting documents for this hearing hindering the tenants' ability to respond to this application.

Similarly, I find the landlord has provided insufficient evidence that the tenants were ever served with the 10 Day Notice or the 30 day demand letter for unpaid utilities. I further find that the landlord provided insufficient evidence with respect to the alleged outstanding rent amount as indicated on the 10 Day Notice. The landlord did not provide any bank statements or ledger to establish what rent payments have been made by the tenants and what amounts, if any, may be outstanding.

I find the landlord's 10 Day Notice must be set aside. The landlord's 10 Day Notice dated September 17, 2018 is hereby cancelled and of no force of effect.

Conclusion

The original decision, order of possession and monetary order dated October 11, 2018 are all hereby cancelled and of no force or effect.

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 30, 2018

Residential Tenancy Branch