



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP, LRE, MNDCT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on November 15, 2018 (the “Application”). The Tenants applied as follows:

- To dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 7, 2018 (the “Notice”);
- For emergency repairs;
- To suspend or set conditions on the Landlord’s right to enter the rental unit; and
- For compensation for monetary loss or other money owed.

The Landlord appeared at the hearing with legal counsel. The Tenants did not appear at the hearing. Parties in relation to a different file called into this hearing and this was addressed at the outset. These other parties exited the conference call. This took seventeen minutes at the start of the hearing to address. Seventeen minutes into the hearing, the Tenants had still not called into the conference. I proceeded in their absence.

I explained the hearing process to the Landlord and legal counsel and neither had questions when asked. The Landlord provided affirmed testimony.

The Landlord advised that the Tenants had vacated the rental unit; however, he sought an Order of Possession because the Tenants still had belongings on the property.

The Landlord confirmed he received the hearing package and Tenants’ evidence. The Landlord testified that he served his evidence on the Tenants by sending the package to a government office. This is not a method of service permitted by the *Residential*

Tenancy Act (the “*Act*”). The Landlord said he confirmed the Tenants received the evidence; however, there was no evidence before me in relation to this. I am not satisfied that the Tenants were served with the Landlord’s evidence. I have not considered the Landlord’s evidence in this decision.

The Landlord was given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered the Notice and tenancy agreement submitted by the Tenants and all oral testimony of the Landlord. I have not considered the remaining evidence submitted by the Tenants as they failed to appear and present their evidence as required by rule 7.4 of the Rules of Procedure (the “Rules”). I will only refer to the evidence I find relevant in this decision.

Issue to be Decided

1. Should the Landlord be issued an Order of Possession based on the Notice pursuant to section 55(1) of the *Act*?

Background and Evidence

The Landlord agreed that there was a written tenancy agreement in this matter between him and the Tenants in relation to the rental unit. He agreed the tenancy started October 1, 2018 and was for a fixed term ending January 1, 2019. The Landlord advised that rent was \$1,000.00 per month due on the first day of each month. The Landlord advised that no security or pet damage deposits were paid. The Landlord advised that there was an addendum to the tenancy agreement; however, I did not have a copy of this before me. The Landlord agreed the tenancy agreement was signed by all parties.

The Notice states that the Tenants failed to pay \$1,000.00 in rent due on November 1, 2018. It is addressed to the Tenants and relates to the rental unit. The space for the Landlord’s name is blank. It is signed and dated by the Landlord. The space for the effective date is blank.

The Landlord testified that his sister served both pages of the Notice on the Tenants in person November 8, 2018.

The Landlord testified that the Tenants never paid the outstanding rent.

Analysis

Rule 7.3 of the Rules states that an arbitrator can dismiss an application for dispute resolution without leave to re-apply if a party fails to attend the hearing.

Here, the Tenants failed to attend the hearing and provide a basis for, or evidence regarding, the Application and their dispute of the Notice. In the absence of evidence from the Tenants regarding the basis for their Application and dispute of the Notice, the Application is dismissed without leave to re-apply.

Section 55(1) of the *Act* requires an arbitrator to issue an Order of Possession if a tenant applies to dispute a notice to end tenancy, the application is dismissed and the notice complies with section 52 of the *Act*.

Section 52 of the *Act* outlines the form and content required for a notice to end tenancy issued under the *Act* and states:

- 52 In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and
 - (e) when given by a landlord, be in the approved form.

[emphasis added]

Here, the Notice does not include an effective date. Therefore, I find the Notice does not comply with section 52 of the *Act*. I decline to issue the Landlord an Order of Possession based on the Notice in the circumstances.

Conclusion

The Application is dismissed without leave to re-apply.

The Landlord is not entitled to an Order of Possession pursuant to section 55(1) of the *Act* as the Notice does not comply with section 52 of the *Act* as required.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: December 21, 2018

Residential Tenancy Branch