



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding IK 74 AVENUE PROJECTS INC and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNR
OPR, MNDL, MNRL, FFL

Introduction

This teleconference hearing was scheduled in response to applications by both parties under the *Residential Tenancy Act* (the “Act”). The Tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”). The Landlord applied for an Order of Possession on the 10 Day Notice, for monetary compensation for damages, for monetary compensation for unpaid rent, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

An agent for the Landlord (the “Landlord”) was present for the teleconference hearing while no one called in for the Tenants during the approximately 27-minute duration of the hearing. The Landlord was affirmed to be truthful in his testimony and confirmed that the Tenants were each served with the Notice of Dispute Resolution Proceeding package and a copy of their evidence by registered mail.

The Landlord provided a copy of the two registered mail tracking numbers which are also included on the front page of this decision. Entering the tracking numbers on the Canada Post website confirms that the packages were delivered but not claimed and were in the process of being returned to the sender. As such, I find that both Tenants were deemed served in accordance with Sections 88 and 89 of the *Act*. I also note that failure to claim mail is not a ground for review under the *Act*.

The Landlord stated that he did not receive any documents from the Tenants regarding their Application for Dispute Resolution. As such, I find that the Landlord was not served with the Tenants’ Notice of Dispute Resolution Proceeding package as required by the

Residential Tenancy Branch Rules of Procedure. Therefore, the Tenants' Application for Dispute Resolution is dismissed, without leave to reapply.

I have considered all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matters

As stated by rule 2.3 of the *Residential Tenancy Branch Rules of Procedure*, claims on an application must be related to each other and unrelated claims may be dismissed. Therefore, I exercise my discretion to dismiss the Landlord's claim for damages, with leave to reapply. The Landlord was informed that the hearing would address their application for an Order of Possession, the monetary claim for unpaid rent, and the request for the recovery of the filing fee.

Issues to be Decided

Is the Landlord entitled to an Order of Possession based on the 10 Day Notice to End Tenancy for Unpaid Rent?

Is the Landlord entitled to compensation for unpaid rent?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The Landlord provided undisputed testimony regarding the tenancy. The tenancy started in November 2017. Monthly rent is \$2,000.00. The Landlord was unsure if this is due on the first day of the month but stated that rent is likely due on the first of each month. No security deposit or pet damage deposit was paid. The Landlord stated that there was no written tenancy agreement and arrangements were made through a verbal agreement instead.

The Landlord testified that a 10 Day Notice was served to the Tenants on June 24, 2019. They submitted a copy of an affidavit signed by a process server on July 4, 2019. In the affidavit, the process server states that the Tenants were served with the 10 Day

Notice on June 24, 2019 by providing the notice in person to one Tenant and leaving a copy on the door of the rental unit as well.

The affidavit includes two additional documents that are referenced – one is the 10 Day Notice and the other is a photo of the 10 Day Notice posted on the door. The copy of the 10 Day Notice included as an exhibit in the affidavit does not include a name or signature of the Landlord or an agent for the Landlord.

However, the Landlord also submitted another copy of the 10 Day Notice into evidence which includes the Landlord's name and a signature of an agent. The Landlord was unsure whether the signed or unsigned version was served to the Tenants. He attempted to call the process server during the hearing but was unable to reach anyone.

On the signed version of the 10 Day Notice, the Landlord's name is in pen while the information on the remainder of the notice was type-written. The Landlord stated that he pre-filled out the information on the notice before providing it to the process server but was unable to confirm when the document was signed, or which version was served to the Tenants.

The 10 Day Notice states that \$38,000.00 in rent was unpaid as due on June 1, 2019. The Landlord has claimed the maximum amount of \$35,000.00. He stated that the Tenants have never paid any money towards rent since the start of the tenancy. He stated that no previous 10 Day Notices had been served and instead, that they had tried to negotiate with the Tenants.

The Landlord stated that the Tenants were working for them at a different company and had made arrangements to work off some of the money owed for rent although never followed through. As such, the Landlord stated that they are still owed the full rent amount from the start of the tenancy.

The Landlord also noted that the Tenants became difficult to deal with and would not answer the door or respond to communication attempts from the Landlord. The Landlord stated that this, along with the attempts at negotiating and due to personal circumstances, were the reasons why they did not serve a 10 Day Notice earlier in the tenancy.

Analysis

I accept the testimony and evidence of the Landlord regarding service of the 10 Day Notice and find that the Tenants were served with the notice on June 24, 2019.

As stated in Section 46(4) of the *Act*, a tenant has 5 days in which to dispute the 10 Day Notice. As the Tenants' application to cancel the 10 Day Notice was dismissed, their application and evidence is not being considered in this decision. I also accept the testimony of the Landlord that no money has been received towards outstanding rent since service of the 10 Day Notice.

Therefore, I find that the Tenants did not pay the outstanding rent or dispute the notice within 5 days which means that Section 5 of the *Act* applies as follows:

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

However, although the Landlord may be entitled to an Order of Possession pursuant to Section 55 of the *Act*, the notice must comply with Section 52 of the *Act* in order for the notice to be effective. Section 52 of the *Act* states the following:

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)

The Landlord submitted two different versions of the 10 Day Notice, one which was signed and one which was not. Although unsure as to which version was served to the Tenants, I find the evidence of the affidavit from the process server to be compelling evidence as to the 10 Day Notice that was served on June 24, 2019.

Attached to the affidavit as “Exhibit A” is a copy of the 10 Day Notice that the process server references as the document that was served. As such, I find it likely that this is the version that was served to the Tenants. As this version is not signed, I find that it does not comply with Section 52 of the *Act* and is therefore not effective. Accordingly, I find that the Landlord is not entitled to an Order of Possession pursuant to Section 55 of the *Act*.

The Landlord’s application for an Order of Possession is dismissed, without leave to reapply. As the 10 Day Notice regarding unpaid rent is not effective, I decline to make a finding on the Landlord’s claim for unpaid rent. As such, I dismiss the Landlord’s application for compensation for unpaid rent, with leave to reapply.

As the Landlord was not successful with the application, I decline to award the recovery of the filing fee paid for the Application for Dispute Resolution.

Conclusion

The Tenants’ Application for Dispute Resolution is dismissed, without leave to reapply.

The Landlord’s application for compensation for unpaid rent is dismissed, with leave to reapply. The Landlord’s application for an Order of Possession and for the recovery of the filing fee is dismissed, without leave to reapply.

Lastly, I note that the circumstances of this case are somewhat unusual. While I have proceeded on the basis that this matter is within our jurisdiction, it might be that the

parties did not intend this arrangement to be a tenancy, given some of the evidence and testimony before me. Therefore, the issue of jurisdiction might still need to be determined if either party proceeds with filing any further applications.

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: August 29, 2019

Residential Tenancy Branch