



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR

Introduction

This application originated as a direct request proceeding and was scheduled for a participatory hearing in an Interim Decision dated July 17, 2019. This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:42 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 9:30 a.m. The landlords attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlords and I were the only ones who had called into this teleconference.

The landlords testified that they served the tenant with their Notice of Reconvened Hearing via registered mail in July 2019 but could not recall on what date. The landlords testified that they are currently out of the country and do not have the registered mail receipts in front of them and therefore are not able to provide the Canada Post tracking numbers to confirm the registered mailings. Based on the landlords' undisputed testimony, I find that the tenants were served with the Notice of Reconvened hearing in accordance with section 89 of the *Act*.

Issues to be Decided

1. Are the landlords entitled to an Order of Possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*?
2. Are the landlords entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
3. Are the landlords entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both landlords, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

The landlords provided the following undisputed testimony. This tenancy began on March 1, 2018 and is currently ongoing. Monthly rent in the amount of \$1,600.00 is payable on the first day of each month. A security deposit of \$800.00 was paid by the tenants to the landlords. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlords testified that on July 1st or 2nd, 2019, they attended at the subject rental property and served a person who they believe resides at the subject rental property with a 10 Day Notice to End Tenancy for Unpaid Rent with an effective date of July 11, 2019 (the "10 Day Notice"). The landlords entered into evidence a witnessed proof of service document which states that on July 1, 2019 landlord S.B. observed landlord Z.B. give a 10 Day Notice to End Tenancy to the tenants. The same proof of service form also states that C.H. received a 10 Day Notice from landlord Z.B. on July 2, 2019. C.H. signed the hand delivery confirmation and acknowledged that he is an adult but did not select the box stating that he lives with the tenants.

The landlords testified that the tenants only paid \$800.00 towards June 2019's rent and have not paid any rent from July to September 2019. The landlords asked to amend their application to include a monetary claim for both August and September 2019's rent. The landlords are seeking a monetary order for unpaid rent in the amount of \$5,600.00.

Analysis

Section 88 of the *Act* states:

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service prescribed in the regulations.

I find that the landlords did not serve the tenants with the 10 Day Notice in accordance with section 88 of the *Act*. I find that the landlords left the 10 Day Notice with C.H. On the proof of service document C.H. confirmed that he is an adult but did not confirm that he lives with the tenants. Service under section 88(e) of the *Act* requires the 10 Day Notice to be served to a person who apparently resides with the tenants. I find that the landlords have not proved, on a balance of probabilities, that C.H. resides with the tenants as the hand delivery confirmation does not indicate that C.H. resides with the

tenants. As service was not effected, I find that the 10 Day Notice is cancelled and of no force or effect.

The landlord's original application claimed unpaid rent in the amount of \$2,400. Since filing for dispute resolution, the landlords testified that the amount of rent owed by the tenant has increased to \$5,600.00.

Section 4.2 of the Rules states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I find that in this case the fact that the landlords are seeking compensation for all outstanding rent, not just the amount outstanding on the date the landlords filed the application, should have been reasonably anticipated by the tenants. Therefore, pursuant to section 4.2 of the Rules and section 64 of the *Act*, I amend the landlords' application to include a monetary claim for all outstanding rent in the amount of \$5,600.00.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act*, I find that the tenants were obligated to pay the monthly rent in the amount of \$1,600.00 on the first day of each month. Based on the landlords' undisputed testimony, I find that the tenants did not pay rent in accordance with section 26(1) of the *Act* and owe the landlords \$5,600.00 in unpaid rent from June 2019 to September 2019.

As the landlords were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Conclusion

The 10 Day Notice is cancelled and of no force or effect.

I issue a Monetary Order to the landlords in the amount of \$5,700.00.

The landlords are provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: September 16, 2019

Residential Tenancy Branch