



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, RR, RP, FFT (Tenants)
 FFL, OPU, OPE (Landlord)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Tenants filed the application November 06, 2020 (the “Tenants’ Application”). The Tenants applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause;
- To dispute a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities;
- To reduce rent for repairs, services or facilities agreed upon but not provided;
- For an order that the Landlord make repairs; and
- To recover the filing fee.

The Landlord filed the application November 18, 2020 (the “Landlord’s Application”). The Landlord applied as follows:

- For an Order of Possession based on the One Month Notice to End Tenancy for Cause;
- For an Order of Possession based on the 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities; and
- To recover the filing fee.

At the hearing, the Landlord sought monetary compensation. The paper application filed by the Landlord does indicate that the Landlord is seeking unpaid rent.

The Landlord appeared at the hearing. Nobody appeared at the hearing for the Tenants. The hearing proceeded for 30 minutes and nobody called into the hearing for the Tenants during this time. I explained the hearing process to the Landlord who did not have questions when asked. The Landlord provided affirmed testimony.

The Landlord advised that the Tenants vacated the rental unit December 02, 2020. The Landlord confirmed they are no longer seeking an Order of Possession but seeking to recover the filing fee and seeking monetary compensation.

The Tenants submitted evidence on the Tenants' Application but not on the Landlord's Application. The Landlord submitted evidence on the Landlord's Application. I addressed service of the hearing package and evidence for the Landlord's Application.

The Landlord testified that they served the hearing package, a copy of the paper application and their evidence on the Tenants by placing the package in the mailbox of the rental unit. The Landlord testified that the Tenants had moved out at this point and that a new tenant lived in the rental unit. The Landlord testified that the new tenant said the Tenants picked up the package. The Landlord also testified about text messages between them and the Tenants in relation to this.

The Landlord could not point to evidence of service of the package. The Landlord did not point to evidence from the new tenant living in the rental unit confirming that they witnessed the Tenants pick the package up. The Landlord could not point to any correspondence between them and the Tenants in which the Tenants acknowledge receiving the package or picking the package up and testified that the Tenants never responded to their text messages after this point.

In relation to the date of service, the Landlord testified that it was served January 21, 2021, the date the Landlord paid the filing fee and the date the RTB contacted the Landlord to pick the package up. These dates are all different dates. The Landlord paid the filing fee on November 18, 2020 and the RTB contacted the Landlord to pick the package up November 26, 2020.

Tenants' Application

Pursuant to rule 7.3 of the Rules of Procedure (the "Rules"), the Tenants' Application is dismissed without leave to re-apply given the Tenants did not appear at the hearing to provide a basis for the Tenants' Application and the Landlord did appear to address the issues.

I have not considered whether the Landlord is entitled to an Order of Possession pursuant to section 55(1) of the *Residential Tenancy Act* (the “*Act*”) given the Landlord is not seeking an Order of Possession.

Landlord’s Application

The Landlord no longer sought an Order of Possession for the rental unit and therefore I consider the following two requests withdrawn:

- For an Order of Possession based on the One Month Notice to End Tenancy for Cause; and
- For an Order of Possession based on the 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities.

The Landlord sought to recover the filing fee and sought monetary compensation which is noted in the paper application.

The hearing package and paper application had to be served in accordance with section 89(1) of the *Act* which states:

89 (1) An application for dispute resolution...when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person...
- (c) by sending a copy by registered mail to the address at which the person resides...
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1)...

I am not satisfied the Landlord served the hearing package and paper application in accordance with section 89(1) of the *Act* because the Landlord stated that these were served by putting them in the mailbox of the rental unit. Given the package was not served in accordance with section 89(1) of the *Act*, the deeming provisions of section 90 of the *Act* do not apply. The Tenants did not appear at the hearing to confirm they received the package.

I acknowledge that I can find the Tenants sufficiently served pursuant to section 71(2) of the *Act*. However, I only find this appropriate when there is sufficient evidence before me that the Tenants in fact received the package. I have reviewed the evidence submitted by the Landlord and do not find it sufficient to prove service. Further, the Landlord left the package in the mailbox of the rental unit at a time when the Tenants no longer lived at the rental unit and a new tenant lived at the rental unit. The Landlord testified that the new tenant told the Landlord that the Tenants picked the package up; however, there is no evidence from the new tenant before me to support this. Nor is there evidence before me to confirm how the new tenant knew the Tenants picked the package up. In the circumstances, I am not satisfied the Tenants received the package and therefore decline to find the Tenants sufficiently served pursuant to section 71(2) of the *Act*.

Further, the Landlord gave conflicting testimony about when the package was served and testified that it was served November 18, 2020, November 26, 2020 and January 21, 2021. I do not accept that the package was served November 18 or 26, 2020 as the Landlord testified that the Tenants no longer lived at the rental unit when the package was served and testified that the Tenants vacated the rental unit December 02, 2020. In the circumstances, I am not satisfied the Landlord complied with rule 3.1 of the Rules in relation to the timing of service.

I acknowledge that the Tenants were aware of the hearing date as the Tenants' Application was set for a hearing on the same date. However, I am not satisfied the Tenants were aware that the Landlord had filed an Application for Dispute Resolution seeking to recover the filing fee and seeking monetary compensation.

Given I was not satisfied of service, I dismissed the Landlord's Application with leave to re-apply. The Landlord can re-apply; however, the Landlord must serve the Tenants in accordance with the *Act* and must prove service at any future hearing. Further, this decision does not extend any time limits set out in the *Act*.

Conclusion

The Tenants' Application is dismissed without leave to re-apply.

The Landlord's Application is dismissed with leave to re-apply.

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: January 28, 2021

Residential Tenancy Branch