



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, OPRM-DR, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an order of possession for unpaid rent, further to having served a 10 Day Notice to End Tenancy for Unpaid Rent dated March 2, 2021 ("10 Day Notice"); and with a request for a monetary order of \$1,000.00 for outstanding unpaid rent from the Tenant; and to recover the \$100.00 cost of his Application filing fee.

This hearing was ordered as a result of a review consideration of an original decision in this matter dated April 6, 2021, for which the Tenant had applied. The reviewing arbitrator ordered a new hearing, based on the ground that the original decision was obtained by fraud. The reviewing arbitrator agreed with the Tenant's application, and a new hearing was ordered. This is that hearing.

The Landlord and his translator, J.Z. ("Translator"), the Tenant and her daughter and advocate, E.K. ("Advocate"), and a witness, T.N. ("Witness") appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process.

The Parties had attended an initial re-hearing on May 25, 2021; however, due to the complicated nature of the Parties' Landlord/Tenant relationship, we were unable to complete the Parties' testimony in one hearing. Further, the Landlord needed to have comments in the hearing translated for him, which also contributed to the delay in the initial re-hearing. As such, we reconvened on June 3, 2021 and completed the testimony and other submissions.

During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence

relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy ran from May 1, 2015 through May 1, 2016, and from then it operated on a month-to-month basis. They agreed that the Tenant pays the Landlord a monthly rent of \$3,500.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$1,750.00, and no pet damage deposit.

The Landlord served the Tenant with a 10 Day Notice, which was signed and dated March 2, 2021, which had the rental unit address on it, and which was served by leaving a copy in a mailbox or mail slot at the residential property address on March 2, 2021. The 10 Day Notice had an effective vacancy date of March 12, 2021, which is automatically corrected by section 53 of the Act to be March 15, 2021. The grounds for issuing the One Month Notice are that the Tenant failed to pay \$1,000.00 of her rent

when it was due on March 1, 2021.

The Tenant explained that this is not a standard landlord/tenant relationship, in that the Tenant does not live in the residential property; rather, she has rented the whole residential property to sublet the units in it. The Tenant said that this is set out in the tenancy agreement, therefore, the Landlord is aware of this situation.

The Addendum to the tenancy agreement states the following in this regard:

1. The apartment building has multiple apartments. The owner gives permission for the tenant to sublet the apartments and bedrooms.

On the next page, the Parties signed further Addendum terms, which included the following:

1. The Tenant is renting the property at 8568 for the express purpose of subletting three individual units (subletting two suites and in the suite that the tenant occupies, subletting the additional bedrooms in that suite).

The Tenant's daughter (and Advocate), is living in the third suite noted above, in which additional bedrooms are also sublet.

An issue before me is whether the 10 Day Notice was properly served to the Tenant by the Landlord when he served it at the rental unit address. The Advocate said that neither she nor her mother received the 10 Day Notice, nor did they realize until April 9, 2021 that the Tenant had failed to pay \$1,000.00 of the rent on March 1, 2021. The Tenant said that as soon as she found out about the missing funds, she immediately sent an etransfer to the Landlord.

The Advocate said:

We found out about it on April 9, when he came and harassed [the Witness] and myself, I immediately paid him. An accidental error. If he wanted the rent, he could have phoned us; the purpose of a 10 Day notice is to compel the tenant to pay rent – he's not giving it in good faith. We have paid more than a quarter of a million dollars in rent to him over the years.

The Landlord said that he served the 10 Day Notice to the Tenant on March 2, 2021, and that he submitted an affidavit from a witness, [Y.S.], as to this service. The Landlord

did not submit an affidavit, but rather, a Proof of Service RTB form #RTB-34, which states that [Y.S.] observed the Landlord leave a copy of the 10 Day Notice to End Tenancy for Unpaid Rent in a mailbox at the residential property address on March 2, 2021 at 4:45 p.m.

The Tenant said that she did not receive this notice. She said she does not live at the residential property and that the Landlord knows this. The Tenant said that the Landlord has delivered multiple documents to her residence on multiple occasions before this, and there was no reason for him to deliver it to the rental unit address. The Tenant said her residence is not far from the residential property or the Landlord's residence. She also said that the rental unit mailbox is not secured, and that anyone could have removed the 10 Day Notice.

The Tenant pointed to the review consideration decision, in which the reviewing arbitrator had ordered a new hearing, because he found that the original decision had been obtained by the Landlord's fraud. Based on parallel evidence that is before me, the reviewing arbitrator said:

On a balance of probabilities, I find it extremely unlikely that the applicant was aware of the landlord's [10 Day] Notice and took no action whether by filing an application to dispute the Notice or by paying the arrears. I find the history of litigation between the parties to be sufficient evidence of the applicant's pattern of responding to any Notices issued by the landlord in a timely basis. I accept the evidence of the applicant that the mailbox of the rental suite is easily accessible by other parties. Taken in its entirety I find the present submission of the applicant that they were not served with the 10 Day Notice as the landlord claimed at the original hearing to be persuasive and likely.

Based on the submissions and evidence I find that the landlord's assertion that they served the applicant with the 10 Day Notice was false, that a party who failed to serve the other party would be aware of the false nature of such a statement and that the original decision was granted on the basis of the landlord's statement that they had served the applicant with the Notice.

I find that the applicant for review has submitted sufficient evidence to demonstrate that the original decision was obtained by fraud.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

How to give or serve documents generally

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:

. . .

(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;

. . . .

[emphasis added]

In the hearing, the Landlord acknowledged that he knows that the Tenant does not reside at the residential property, and that he has attended the address at which the Tenant resides to serve her with documents in the past.

Given the undisputed evidence before me that the Landlord has served documents to the Tenant at her actual residence on “multiple occasions”, rather than at the residential property, I agree with the reviewing arbitrator. I find that it is more likely than not that the Landlord did not serve the Tenant with the 10 Day Notice, such that she would be likely to receive it. I find that the Landlord’s manner of serving the 10 Day Notice was not compliant with section 88 of the Act, and that the Tenant did not receive it. As such, I find that the 10 Day Notice was not valid or enforceable. Accordingly, and pursuant to section 62 of the Act, I dismiss the Landlord’s claims wholly without leave to reapply. I find that the tenancy will continue until it is ended in accordance with the Act.

Conclusion

The Landlord is unsuccessful in his Application, as he failed to serve the Tenant with the 10 Day Notice, pursuant to section 88 of the Act. The Landlord’s Application is dismissed wholly without leave to reapply.

The tenancy will continue until ended in compliance with the Act.

This Decision is final and binding on the Parties, unless otherwise provided under the

Act, and 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: June 04, 2021

Residential Tenancy Branch