



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-DR, FF

Introduction

This hearing convened as a result of the landlord's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for:

- an order of possession of the rental unit under section 55(2) of the Act pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice);
- a monetary order for unpaid rent; and
- to recover the cost of the filing fee.

This dispute began as an application via the ex-parte, non-participatory Direct Request process and was adjourned to a participatory hearing based on the Interim Decision by an adjudicator with the Residential Tenancy Branch (RTB), dated December 3, 2021, which should be read in conjunction with this decision.

The adjudicator said that the landlord did not provide sufficient proof of service of the 10 Day Notice to End Tenancy to the tenants. The adjudicator wrote that the landlord provided an unsigned witness statement that they saw the landlord deliver the document and as a result, the adjudicator could not confirm service of the 10 Day Notice. The adjudicator entered an Interim Decision, ordering the direct request proceeding be reconvened to a participatory hearing.

At this participatory hearing, both parties attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters-

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, both parties affirmed they were not recording the hearing.

Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit based upon a 10 Day Notice to End Tenancy, a monetary order for unpaid monthly rent and to recover the cost of the filing fee?

Background and Evidence

The tenancy began on October 15, 2020, monthly rent was \$1,650, due on the first day of the month. Filed in evidence was the written tenancy agreement.

Filed in evidence and the subject of this dispute was the 10 Day Notice. The Notice was dated October 4, 2021, for an effective date of October 14, 2021, listing unpaid monthly rent in the amount of \$1,750 as of October 1, 2021.

The landlord submitted that he served the tenant, CN, with the 10 Day Notice on October 4, 2021. The landlord did not provide another witness statement.

The landlord said that his witness to prove service of the Notice was his 14 year old son. However, the landlord's son was not present at the hearing to provide testimony. The tenant denied that he received the 10 Day Notice, and instead, said that the landlord has been overpaid since the beginning of the tenancy and as a result, the tenants are always ahead in rent payments.

Further, the parties agreed that the monthly rent through December 2021 is fully paid, and the tenant said they paid the monthly rent for January 2022.

Analysis

Under section 46 (1), a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. The Notice must comply with section 52 of the Act, as to form and content.

The landlord was alerted by the adjudicator's Decision of December 3, 2021, that he had provided insufficient proof that the landlord had served the 10 Day Notice to the tenants, yet the landlord failed to submit any further evidence at the participatory hearing.

While the landlord testified that he handed the tenant the 10 Day Notice, the tenant denied receiving it. I find disputed testimony, without anything further, fails to satisfy the claimant's burden of proof on a balance of probabilities.

For this reason, I find the landlord submitted insufficient evidence to prove he served the tenants a 10 Day Notice, as required by the Act. As a result, I dismiss the landlord's application, without leave to reapply on the Notice at issue here, due to insufficient evidence of service of the Notice and for the reason that both parties agreed the tenants had paid the monthly rent at least through December 2021.

The landlord was cautioned at the hearing that he must issue receipts for any rent payments paid by cash.

Conclusion

The landlord's application was dismissed, due to insufficient evidence that the 10 Day Notice was served to the tenants.

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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: January 5, 2022