Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Lighthouse Realty Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Tenants: **CNR, LRE, OLC, FFT**
Landlord: **MNR-DR, OPR-DR, FFL**

Introduction

This hearing dealt with the Tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to Sections 46(1) and 62 of the Act;
2. An Order to suspend or set conditions on the Landlord's right to enter the rental unit pursuant to Section 70 of the Act;
3. An Order for the Landlord to comply with the Act, regulations and tenancy agreement pursuant to Section 62(3) of the Act; and,
4. Recovery of the application filing fee pursuant to Section 72 of the Act.

This hearing also dealt with the Landlord's cross application pursuant to the Act for:

1. An Order of Possession for Unpaid Rent pursuant to Sections 46, 55 and 62 of the Act;
2. A Monetary Order to recover money for unpaid rent pursuant to Sections 26, 46 and 67 of the Act; and,
3. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Property Manager, MB, the Landlord's Manager, RM, and the Tenants' Agent, KW, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

The Landlord served the 10 Day Notice by email on November 6, 2021. The Tenants' Agent submitted that the Tenants did not authorize the Landlord to serve legal documents by email. Pursuant to Section 88 of the Act, the 10 Day Notice, that is 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 provided for in the regulations (e.g. email, if explicitly authorized by the Tenants).

As the Landlord did not serve the Tenants in one of the above ways, principles of natural justice were breached. Principles of natural justice (also called procedural fairness) are, in essence, procedural rights that ensure that parties know the case being

made against them, are given the opportunity to reply, and have the right to have their case heard by an impartial decision maker: *AZ Plumbing and Gas Inc. (Re)*, 2014 CanLII 149849 (BC EST) at para. 27. Procedural fairness requirements in administrative law are not technical, but rather functional in nature. The question is whether, in the circumstances of a given case, the party that contends it was denied procedural fairness was given an adequate opportunity to know the case against it and to respond to it: *Petro-Canada v. British Columbia (Workers' Compensation Board)*, 2009 BCCA 396 (CanLII) at para. 65. I find that service was not effected and it would be administratively unfair to proceed on the Landlord's 10 Day Notice against the Tenants. I cancel the Landlord's 10 Day Notice because of improper service with leave to re-apply.

The Tenants served the Notice of Dispute Resolution Proceeding package for this hearing to the Landlord via Canada Post registered mail on November 18, 2021 (the "NoDRP package"). KW referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Landlord confirmed receipt of the NoDRP package but said it did not include the Tenants' evidence. I note the Tenants' evidence was uploaded 11 days after their applicable deadline. Pursuant to Rules of Procedure 3.14, documentary and digital evidence must be received by the respondent and the RTB not less than 14 days before the hearing. The Tenants' Agent did not show me that the Tenants' evidence was new and relevant evidence and that it was not available at the time that the Tenants' application was made or when they served and submitted their evidence pursuant to Rules of Procedure 3.17. I declined to consider the Tenants' evidence in this matter. I find that the Landlord was deemed served with the NoDRP package for this hearing five days after mailing them, on November 23, 2021, in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Landlord served their Notice of Dispute Resolution Proceeding package for this hearing to the Tenants via Canada Post registered mail on November 25, 2021 (the "NoDRP-OP/MN package"). MB referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Tenants' Agent submitted that the Tenants told him that the package did not have the correct name on it. The Canada Post package was returned to the Landlord. I find that service was not effected; however, this NoDRP-OP/MN package was further to the 10 Day Notice which I previously found was not served properly on the Tenants. The Landlord's application is dismissed in its entirety due to improper service with leave to re-apply.

Preliminary Matter

Prior to the parties' testifying, I advised them that Rule 2.3 authorizes me to dismiss unrelated claims contained in a single application. The Tenants indicated different matters of dispute on their application, the most urgent of which is the claim to cancel the 10 Day Notice. I advised that not all of the claims on the application are sufficiently related to be determined during this proceeding; therefore, I will consider only the Tenants' request to cancel the 10 Day Notice and the claim for recovery of the application filing fee at this proceeding. The Tenants' other claims are dismissed, with leave to re-apply, depending on the outcome of this decision.

Issues to be Decided

1. Are the Tenants entitled to a cancellation of the Landlord's 10 Day Notice?
2. Are the Tenants entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

This fixed term tenancy began on October 1, 2021. The fixed term ends on September 30, 2022. Monthly rent is $7,000.00 payable on the first day of each month. A security deposit of $3,500.00 was collected at the start of the tenancy and is still held by the Landlord.

At the outset of the hearing, the Tenants' Agent argued that email was not an agreed mode to serve legal documents to the Tenants. The Landlord could not point to evidence where explicit instructions were provided to the Landlord that email could be used for serving legal documents, although email was freely used for communication.

KW points to the addendum to the tenancy agreement, Section 18 which states:

1) *A tenant is deemed to have received any notice, process or document required or permitted to be given, when served personally or on any adult occupant (over the age of 19) on the tenant's premises.*

2) *Any notice posted on the door shall be be [sic] deemed to be received 3 days after it was posted.*
3) *Any notice set by registered mail shall be deemed to be received 5 days after it was mailed.*

KW also notes that the RTB has form #RTB-51 which is specifically for formally agreeing that email can be used for service of legal documents. The Tenants neither signed this form nor provided explicit instructions that email can be used for service of legal documents.

The Landlord states that the Tenant, DG, was concerned about her health and when they met on September 30, 2021, the Landlord maintained that the Tenant said to the Landlord, '*please email me*'.

RM disclosed in the hearing that the Tenants owe $28,000.00 in outstanding rent.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

An email address for service for the Tenants was not provided in the tenancy agreement or via Form #RTB-51. Section 43(1) of the Residential Tenancy Regulations allows service via email if an email address was provided for this purpose. Policy Guideline #12 says:

> *At any time, a tenant or landlord may provide an email address for service purposes. By providing an email address, the person agrees that important documents pertaining to their tenancy may be served on them by email. … A tenant or landlord must provide to the other party, in writing, the email address to be used. There is no prescribed form for doing so, but parties may want to use RTB-51 - "Address for Service" form and provide it to the other party.*
>
> *If there has been a history of communication between parties by email, but a party has not specifically provided an email address for service purposes, it is*

> *not advisable to use email as a service method. … Parties may face delays or risk their application being dismissed if service is not effected in accordance with the legislation.*

Although much communication was conducted via email, email was not provided as a mode to serve legal documents on the Tenants in this matter. I find that the Tenants have not provided an email address for service purposes and the 10 Day Notice served on the Tenants by email was not a valid form of service for this document. I cancel the Landlord's 10 Day Notice because of improper service.

The Tenants are successful in cancelling the Landlord's 10 Day Notice, and the tenancy shall continue until it is ended in accordance with the Act. Section 72(1) of the Act provides a possibility for recovery of the application filing fee; however, in this matter I will not grant it.

Conclusion

The Tenants' application to dismiss the Landlord's 10 Day Notice is granted.

The Landlord's cross application is dismissed in its entirety.

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: February 15, 2022

Residential Tenancy Branch