Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LRE, CNL (Tenant)
MNR-DR (Landlords)

Introduction

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

The Tenant filed two Applications for Dispute Resolution, the first on October 12, 2021 and the second on November 12, 2021. The Tenant applied as follows:

- To dispute a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities dated October 12, 2021 (the "10 Day Notice")
- To suspend or set conditions on the Landlord's right to enter the rental unit
- To dispute a Two Month Notice to End Tenancy for Landlord's Use of Property dated October 29, 2021 (the "Two Month Notice")

The Landlords filed their Application for Dispute Resolution on October 22, 2021 and applied as follows:

- For an Order of Possession based on the 10 Day Notice
- To recover unpaid rent

The Tenant appeared at the hearing. The Landlord appeared at the hearing and appeared for Landlord B.B. S.M. appeared at the hearing as agent for the Landlord. I explained the hearing process to the parties who did not have questions when asked. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The parties provided affirmed testimony.

Pursuant to rule 2.3 of the Rules, I told the Tenant at the outset of the hearing that I would consider the dispute of the 10 Day Notice and Two Month Notice and dismiss the request to suspend or set conditions on the Landlord's right to enter the rental unit as this is not sufficiently related to the dispute of the 10 Day Notice and Two Month Notice. The request to suspend or set conditions on the Landlord's right to enter the rental unit is dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Residential Tenancy Act* (the "*Act*").

The Tenant uploaded evidence to their Applications for Dispute Resolution. The Landlord uploaded evidence. I addressed service of the hearing packages and evidence.

The Tenant confirmed receipt of the hearing package and evidence for the Landlord's Application for Dispute Resolution and did not raise an issue with service.

The Landlord testified that they did not receive anything from the Tenant in relation to their Applications for Dispute Resolution. S.M. testified that they received two emails from the Tenant on December 08, 2021; however, there were no attachments to these emails and the emails did not include hearing packages.

The Tenant testified that they sent the hearing packages and their evidence to the Landlord at three different addresses by regular mail. The Tenant testified that they sent the hearing packages to S.M. by email December 08, 2021. The Tenant advised that they did not submit any documentary evidence to support their testimony about service.

It is the Tenant who has the onus to prove service of their materials.

The hearing packages 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:
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> (a) by leaving a copy with the person;
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> (b) if the person is a landlord, by leaving a copy with an agent of the landlord;

(c) by sending a copy by 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 registered mail to a forwarding address provided by the tenant;

(e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];

(f) by any other means of service provided for in the regulations.

Sending the hearing package by regular mail is not a method of service permitted by section 89(1) of the *Act.* Given this, the Landlord is not deemed to have received the hearing packages pursuant to section 90 of the *Act*. Further, the Tenant did not point to any documentary evidence to prove service and therefore I am not satisfied of service of the hearing packages on the Landlord.

The Tenant and S.M. disagreed about whether the emails sent to S.M. December 08, 2021 included attachments. The Tenant said they did not upload a copy of the emails and did not point to any documentary evidence to prove service and therefore I am not satisfied of service of the hearing packages on S.M.

Given I am not satisfied of service of the hearing packages, the Tenant's Applications for Dispute Resolution are dismissed with leave to re-apply. However, this decision does not extend any time limits set out in the *Act*.

In relation to the Tenant's evidence, regular mail is a permitted method of service under section 88(c) of the *Act*. However, the Tenant testifies that they sent their evidence by regular mail and the Landlord testifies that they did not receive the Tenant's evidence. The Tenant could not point to documentary evidence to support their testimony about service and therefore I am not satisfied their evidence was served on the Landlord as required by rules 3.1 and 3.14 of the Rules. Pursuant to rule 3.17 of the Rules, I excluded the Tenant's evidence for two reasons. First, the only evidence submitted by the Tenant was submitted on their Applications for Dispute Resolution which are dismissed. Second, I found it would be unfair to consider evidence that I am not satisfied the Landlord has seen or could respond to at the hearing.

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started May 15, 2020.

During the hearing, I raised the settlement option with the parties pursuant to section 63 of the *Act* which allows an arbitrator to assist the parties to settle the dispute.

I explained the following to the parties. Settlement discussions are voluntary. If they chose to discuss settlement and did not come to an agreement that was fine, I would hear and decide the matter. If they did come to an agreement, I would write out the agreement in my written decision which would become a final and legally binding agreement which the parties could not change their mind about later.

The parties did not have questions about the above. The parties discussed settlement and came to an agreement.

Prior to ending the hearing, I confirmed the terms of the settlement agreement with the parties. I told the parties I would issue an Order of Possession. I confirmed with the parties that all issues had been covered. The parties confirmed they were agreeing to the settlement voluntarily.

Settlement Agreement

The Landlords and Tenant agree as follows:

1. The 10 Day Notice is cancelled.

2. The tenancy will end, and the Tenant will vacate the rental unit, no later than 1:00 p.m. on March 31, 2022.

3. The Landlords withdraw their request to recover unpaid rent and will re-apply for this if necessary.

This agreement is fully binding on the parties and is in full and final satisfaction of this dispute.

The Landlords are issued an Order of Possession for the rental unit which is effective at 1:00 p.m. on March 31, 2022. If the Tenant fails to vacate the rental unit in accordance with the settlement agreement set out above, the Landlords must serve the Tenant with

this Order. If the Tenant fails to vacate the rental unit in accordance with the Order, the Order may be enforced in the Supreme Court 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 *Act*.

Dated: February 22, 2022

Residential Tenancy Branch