



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, RP

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on November 20, 2021 (the “Application”). The Tenant applied as follows:

- To dispute a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities dated November 12, 2021 (the “10 Day Notice”)
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement
- For a repair order

The Tenant and Landlord appeared at the hearing. 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 dismiss the remaining requests as they are not sufficiently related to the dispute of the 10 Day Notice. The remaining requests are dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Residential Tenancy Act* (the “Act”).

The Landlord sought an Order of Possession based on the 10 Day Notice as well as a Monetary Order for unpaid rent.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Landlord confirmed receipt of the hearing package. The Landlord testified that they did not receive the Tenant's evidence. The Tenant testified that they served their evidence on the Landlord by email November 22, 2021 with the hearing package. A copy of the November 22, 2021 email is in evidence.

The Tenant confirmed receipt of the Landlord's evidence and confirmed there are no service issues regarding it.

In relation to the Tenant's evidence, the Tenant was required to serve it on the Landlord pursuant to rule 3.14 of the Rules. The parties disagree about whether the Tenant's evidence was served on the Landlord. The Tenant bears the onus to prove their evidence was served on the Landlord. The November 22, 2021 email only shows that the hearing package was served on the Landlord, not that the Tenant's evidence was also served. In the absence of further evidence, I am not satisfied the Tenant's evidence was served on the Landlord and therefore exclude it pursuant to rule 3.17 of the Rules. I have considered the 10 Day Notice submitted by the Tenant because this is a document issued by the Landlord and therefore the Landlord should be aware of it.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed the admissible documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the 10 Day Notice be cancelled?
2. Is the Landlord entitled to an Order of Possession based on the 10 Day Notice?
3. Is the Landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

A written tenancy agreement was submitted and the parties agrees it is accurate. The tenancy started October 01, 2021 and is for a fixed term ending September 30, 2022. Rent is \$950.00 per month due on the first day of each month. The Tenant paid a \$475.00 security deposit and \$475.00 pet damage deposit.

The Tenant submitted page 1 of 3 of the 10 Day Notice. The Landlord did not submit a copy of the 10 Day Notice. Page 1 of the 10 Day Notice includes the Tenant's name, the rental unit address, a signature of the Landlord, the date the notice was signed and an effective date of November 28, 2021.

The Landlord testified that the 10 Day Notice was sent to the Tenant by registered mail November 12, 2021 and provided Tracking Number 871. I looked Tracking Number 871 up on the Canada Post website which shows the package was sent November 12, 2021 and delivered November 19, 2021.

The Tenant testified that the 10 Day Notice was delivered to their daughter and received by the Tenant November 19, 2021. The Tenant testified that they only received page 1 of the 10 Day Notice.

I asked the Landlord what page 2 of the 10 Day Notice stated. The Landlord had to look for the 10 Day Notice and there was a long delay in the Landlord finding the 10 Day Notice. The Landlord testified that page 2 of the 10 Day Notice states, "complete at the time of service". I told the Landlord it sounded as if the 10 Day Notice was missing the grounds. The Landlord then testified that page 2 stated that the Tenant had failed to pay \$450.00 in outstanding rent due November 01, 2021. The Landlord testified that all three pages of the 10 Day Notice were served on the Tenant. The Landlord relied on Tracking Number 871 to show this as well as the fact that the Tenant disputed the 10 Day Notice.

The parties testified about \$450.00 in outstanding rent due November 01, 2021. At the end of the hearing, the Landlord testified that page 2 of the 10 Day Notice read out previously was for a different notice to end tenancy and that page 2 of the 10 Day Notice issued to the Tenant stated that the Tenant failed to pay \$900.00 in rent.

Analysis

The 10 Day Notice was issued pursuant to section 46 of the *Act*.

Pursuant to rule 6.6 of the Rules, the Landlord has the onus to prove the validity of the 10 Day Notice. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Part of proving the validity of the 10 Day Notice is proving service of the 10 Day Notice and that the 10 Day Notice served complies with section 46 of the *Act*. Section 46(2) of the *Act* requires that the 10 Day Notice comply with section 52 of the *Act*.

Section 52 of the *Act* states:

52 In order to be effective, a notice to end a tenancy must be in writing and **must**

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy...**
- (e) when given by a landlord, be in the approved form.**

(emphasis added)

The parties disagree about whether page 1 or all three pages of the 10 Day Notice were served on the Tenant.

I find there is some support for the Tenant's position that they only received page 1 of the 10 Day Notice because they took a photo and uploaded page 1 of the 10 Day Notice and not page 2 or 3 of the 10 Day Notice. I find it unlikely that the Tenant would take a photo and upload page 1 of the 10 Day Notice alone if they in fact received all three pages.

Further, the Landlord did not submit a copy of the 10 Day Notice at all.

The Landlord relied on Tracking Number 871 to support that all three pages of the 10 Day Notice were served on the Tenant; however, the tracking number does not provide

any information about what was in the package sent by registered mail and the Tenant acknowledged receiving page 1 of the 10 Day Notice.

The Landlord relied on the fact that the Tenant disputed the 10 Day Notice to support that all three pages were served on the tenant; however, page 1 of the 10 Day Notice explains what the Tenant had to do to dispute it and this information is available to the general public on the RTB website. I do not accept that the Tenant disputing the 10 Day Notice shows that the Tenant received all three pages of the 10 Day Notice.

As well, it seemed at the hearing that the Landlord did not know what was served on the Tenant because the Landlord did not submit a copy of the 10 Day Notice, took a long time to locate the 10 Day Notice, originally stated that page 2 of the 10 Day Notice started with a section that the approved RTB form does not start with and acknowledged at the end of the hearing that they had read the wrong 10 Day Notice which actually stated \$900.00 was owing rather than the \$450.00 originally stated.

In the circumstances, I am not satisfied the Landlord knows what was served on the Tenant and am not satisfied there is compelling evidence showing all three pages of the 10 Day Notice were served on the Tenant. I accept the testimony of the Tenant that they only received page 1 of the 10 Day Notice. Given this, I find the 10 Day Notice provided to the Tenant did not include the grounds for the notice, which are on page 2 of the notice, and was not in the approved form as the approved RTB form includes all three pages and not only page 1.

Given the above, I find the 10 Day Notice served on the Tenant does not comply with section 52 or 46(2) of the *Act* and therefore is invalid. I cancel the 10 Day Notice. The tenancy will continue until ended in accordance with the *Act*. The Tenant's dispute of the 10 Day Notice is granted.

The authority to issue the Landlord a Monetary Order in relation to outstanding rent on the Tenant's Application comes from sections 55(1) and (1.1) of the *Act* which state:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

The Landlord is not entitled to a Monetary Order pursuant to section 55(1.1) of the *Act* because neither subsection 55(1)(a) or (b) applies because the 10 Day Notice does not comply with section 52 of the *Act* and the Tenant's dispute of the 10 Day Notice has been granted.

Conclusion

The 10 Day Notice is invalid and is cancelled. The tenancy will continue until ended in accordance with the *Act*.

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: March 14, 2022

Residential Tenancy Branch