



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RR, RP (Tenants)
 FFL, OPC (Landlord)

Introduction

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

The Tenants filed their application January 30, 2022 (the “Tenants’ Application”). The Tenants applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause dated January 29, 2022 (the “Notice”)
- To reduce rent for repairs, services or facilities agreed upon but not provided
- For a repair order

The Landlord filed their application February 17, 2022 (the “Landlord’s Application”). The Landlord applied as follows:

- For an Order of Possession based on the Notice
- To recover the filing fee

The Tenant appeared at the hearing and appeared for Tenant A.N. The Landlord appeared at the hearing. I explained the hearing process to the parties. 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 I would consider the dispute of the Notice and dismiss the remaining requests as they are not sufficiently related to the dispute of the 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 Tenants submitted evidence prior to the hearing. The Landlord only submitted proof of service documents prior to the hearing.

The Landlord confirmed receipt of the hearing package and evidence for the Tenants’ Application.

The Tenant testified that they did not receive the hearing package for the Landlord’s Application. The Tenant testified about evidence they received from the Landlord the day before the hearing; however, I did not have this evidence before me and therefore it was a non-issue. The Landlord testified that the hearing package for the Landlord’s Application was sent to the Tenants by registered mail March 02, 2022, and that the customer receipts in evidence relate to this. I looked the tracking numbers from the customer receipts up on the Canada Post website which shows notice cards were left in relation to the packages March 03, 07, 10 and 14, 2022. The Canada Post website shows the packages were unclaimed. The Tenant testified that they never received notice cards in relation to the packages. I do not accept that the Tenants never received notice cards in relation to the packages because the Canada Post website shows notice cards were left. Pursuant to section 90(a) of the *Act*, the Tenants are deemed to have received the packages March 07, 2022.

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

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, is the Landlord entitled to an Order of Possession based on the Notice?
3. Is the Landlord entitled to recover the filing fee?

Background and Evidence

The parties agreed there is a verbal tenancy agreement between them.

The Tenant submitted the Notice which only includes pages 1 and 3 as well as two additional handwritten pages. The Tenant testified that they did not receive page 2 of the Notice.

Analysis

The Notice was issued pursuant to section 47 of the *Act*. Pursuant to section 47(3) of the *Act*, the Notice must 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)

Pursuant to rule 6.6 of the Rules, it is the Landlord who has the onus to prove the validity of the Notice.

The Tenant testified that they did not receive page 2 of the Notice and I accept this because the Tenant submitted a copy of the Notice and page 2 is missing. The Landlord did not submit a copy of the Notice or any documentary evidence showing what was served on the Tenants. In the circumstances, I am not satisfied all three pages of the Notice were served on the Tenants and therefore am not satisfied the

Notice complies with sections 52(e) or 47(3) of the *Act*. Given this, I am not satisfied the Notice is a valid notice to end tenancy and I cancel the Notice. The tenancy will continue until otherwise ended in accordance with the *Act*.

Given the Landlord was not successful in the Landlord's Application, I decline to award the Landlord reimbursement for the filing fee.

The Tenants' dispute of the Notice is granted.

The Landlord's Application is dismissed without leave to re-apply.

Conclusion

The Tenants' dispute of the Notice is granted.

The Landlord's Application is dismissed without leave to re-apply.

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: May 02, 2022

Residential Tenancy Branch