



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR; MNRL

Introduction

On July 28, 2022, an Adjudicator appointed pursuant to the *Residential Tenancy Act* (the “**Act**”) adjourned the landlord’s application for dispute resolution for the following items to a participatory hearing. She did so on the basis of an *ex parte* hearing using the Residential Tenancy Branch’s direct request process. The Adjudicator adjourned the direct request for the following reasons:

I find that the tracking number on the Canada Post Customer Receipt provided by the landlord is for a package sent by Canada Post’s Express post mailing, which may or may not require a signature from the individual to confirm delivery of the document to the person named as the respondent. In this case, Canada Post’s online tracking system shows that a signature was not required for the delivery of this Express post mailing and, as such, does not meet the definition of registered mail as defined under the Act.

As the landlord has not served the 10-Day Notice to the tenant in accordance with Policy Guideline #39, I find that the landlord’s application cannot proceed by way of the Direct Request Process.

I have been delegated authority under the Act to consider Landlord’s application for:

- an order of possession for non-payment of rent pursuant to section 55;

The Tenant did not attend this hearing, although I left the teleconference hearing connection open until 2:10 p.m. in order to enable the Tenant to call into this teleconference hearing scheduled for 1:30 p.m. The Landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

The Landlord served the 10-Day Notice on the Tenant by way of registered mail on May 11, 2022. The Landlord provided a Canada Post Express tracking number confirming this mailing which is reproduced on the cover.

The Landlord sent the Notice of Dispute Resolution Proceeding – Direct Request Process Package, the Tenancy Agreement, the 10 Day Notice to End Tenancy, the Proof of Service and the Landlord Direct Request worksheet by Registered Mail on July 10, 2022. The Landlord verbally provided the Canada Post Tracking number confirming this mailing which is reproduced on the cover.

The Landlord testified she served the Tenant the notice of reconvened hearing package which included a copy of the interim decision, the tenancy agreement, the 10-Day Notice, the monetary worksheet and all supporting documents via registered mail on July 30, 2022. The Landlord provided a Canada Post tracking number confirming this mailing, which is reproduced on the cover of this decision.

Canada Post online tracking information indicates the package was available on August 4, 2022, five days after the Landlord mailed it, and the Tenant picked up and signed for the package on August 5, 2022. I find that the Tenant was deemed served with this package on August 4, 2022, in accordance with sections 89 and 90 of the Act.

At the outset, I advised the landlord of Rule 6.11 of the Rules of Procedure (the “**Rules**”), which prohibits participants from recording the hearing. The landlord confirmed that they were not recording the hearing.

I also advised the landlord that pursuant to Rule 7.4, I would only consider written or documentary evidence that was directed to me in this hearing.

I checked branch records and confirmed that the Tenant has made no application for dispute resolution. The hearing proceeded in the absence of the Tenant pursuant to Rule 7.3 of the Rules.

Issues to be Decided

Is the Landlord entitled to:

- 1) an order of possession;

Background and Evidence

While I have considered the documentary evidence and the testimony of the Landlord, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the Landlord’s claim and my findings are set out below.

The Landlord submitted a copy of the residential tenancy agreement which was signed by the Landlord and Tenant on September 15, 2021. The parties entered into a written fixed term tenancy agreement starting September 15, 2021 ending October 31, 2021 thereafter continuing on a month-to-month basis. Monthly rent is \$1350.00 and is payable on the first of each month. The Tenant paid the landlord a security deposit of \$675.00. The landlord still retains this deposit.

The Landlord submitted a copy of the 10-Day Notice to End Tenancy for Unpaid Rent (the 10-Day Notice) dated May 10, 2022 for \$2850.00 in unpaid rent. The 10-Day Notice provides that the Tenant had five (5) days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of May 21, 2022.

The Landlord showed that on May 1, 2022 the tenants failed to pay rent due, and it was not until after the 10 Day Notice was issued that the Tenant made three (3) partial payments as follows:

- May 17, 2022-----\$200.00

- May 21, 2022-----\$100.00
- May 24, 2022-----\$100.00

The Landlord submitted a copy of a Proof of Service Notice to End Tenancy form (#RTB 34) which indicated that the 10-Day Notice was sent to the tenants by registered mail at 5:53 p.m. on May 11, 2022. A copy of a Canada Post Express receipt containing the tracking number to confirm the 10 Day Notice was, in fact, sent to the Tenant on May 11, 2022. Canada Post tracking confirms the package was delivered to that address on May 13, 2022 but not signed for.

The Landlord submitted a Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy (between March 1 through May 1, 2022).

The Landlord testified the Tenant failed to pay an outstanding balance of \$150.00 in March; \$1350.00 in April; and \$950.00 in May for an outstanding balance of \$2850.00.

The Landlord testified that other than the \$400.00 received subsequent to serving the notice to end tenancy, the Tenant has not paid any rent to the landlord. The Tenant also continues to occupy the rental unit. To date, the Tenant is in rental arrears in the amount of \$ 8250.00.

On July 10, 2022 the Landlord stated she sent the Notice of Direct Request proceedings and all her evidence to the Tenant by Registered mail. Canada Post tracking confirms the package was sent July 10, 2022 and received and signed for by the Tenant on July 12, 2022 at 12:35 p.m.

On July 30, 2022 the Landlord sent the notice of the reconvened hearing including copies of the adjudicator's decision, the monetary order worksheet, and the 10 Day Notice as well as all other evidence she submitted to the Residential Tenancy Branch This package was sent by Registered Mail on July 30, 2022, the day after she received the decision by email.

The Landlord confirmed she has not received an application from the Tenant disputing the 10-Day Notice.

Analysis

The Landlord seeks an order of possession for unpaid rent.

The application was originally filed as a direct request but was adjourned to a participatory hearing because the Landlord sent the 10 Day Notice by Express post and did not use the signature option. In an *ex parte* proceeding, the Landlord must serve the 10 Day Notice in accordance with sections 71(2) (a) and 88 of the Act. Policy Guideline #39 provides additional information about service requirements for applications for Direct Requests. The Canada Post Tracking information confirmed the package was delivered to the Tenant's address on May 13, 2022. Although receipt of the 10 Day Notice is not confirmed by signature, of note, the Tenant made three (3) partial payments to the landlord in the amount of \$400 after the May 13, 2022 delivery date.

On July 10, 2022 the Landlord mailed the Notice of Direct Request proceeding and documents to the Tenant. This Included but was not limited to the Monetary worksheet and the 10 Day Notice. The

Tenant did not apply for Dispute Resolution seeking more time to cancel the notice to end tenancy for unpaid rent or request the landlord comply with the Act, once notified of the direct request process.

When the Direct Request proceeding was adjourned and a participatory hearing scheduled, the Landlord sent the notice of the reconvened hearing and complete evidence package, again, including the 10 Day Notice and monetary worksheet to the Tenant by Registered Mail on July 30, 2022. Canada Post Tracking confirms the Tenant received and signed for the package on August 5, 2022 at 1:20 p.m. The Tenant did not attend the participatory hearing, submit evidence to be considered at the participatory hearing, or file a separate application for Dispute Resolution.

While Policy Guideline #39 refers specifically to Direct Request applications and the preferred methods of service requirements for *ex parte* hearings, I reviewed Policy Guideline #12, "Service Provisions", that sets out "the ways in which documents pertaining to a tenancy or a dispute resolution proceeding are required or permitted to be given or served on a party. Documents include the tenancy agreement, **notices**, applications for dispute resolution, decisions, orders, summons to testify and evidence." [emphasis added]

Policy Guideline #12, "Registered Mail" reads in part:

.....

- Where a landlord is serving a tenant by Registered Mail, the address for service must be where the tenant resides at the time of mailing, or the forwarding address provided by the tenant.

Registered Mail includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available. This includes Express post, if the signature option is used. Parties using Registered Mail or Express Post should obtain a copy of the proof of delivery from Canada Post and submit that document as proof of service. This can be obtained from Canada Post's website. A screen shot or picture of the information is sufficient. [emphasis added]

The Canada Post Express tracking information confirms that the address the 10- Day Notice was sent to was where the tenant lives. The Canada Post receipt reads, "Signature unavailable or not requested". The Landlord provided insufficient evidence that she had requested a signature and that Canada Post was unable to obtain a signature from the tenant. Although the subsequent packages, for the Direct Request proceeding and the participatory hearing, were sent by Canada Post Registered mail and signatures were obtained and those packages included copies of the 10-Day Notice, the original 10 Day Notice was not sent to the Tenant in compliance with service requirements.

The Landlord failed to send the 10 Day Notice dated May 11, 2022 as per the service requirements. While Express post can be used to send documents pertaining to a tenancy dispute, the party serving the documents must show that the 'signature option' was required. The service of the 10 Day Notice was defective as it did not meet the legislative requirements. The 10-Day Notice is of no force and effect. In view of the above, I cancel the 10 Day Notice and dismiss the Landlord's claim for an Order of Possession, with leave to reapply.

If Landlord decides to issue a new Notice and file for dispute resolution, she may contact the Residential Tenancy Branch to answer questions or for assistance. I have provided the link to the Residential Tenancy Branch Information Line below.¹

Conclusion

I cancel the 10-Day Notice and dismiss the Landlord's claim for an Order of Possession pursuant to section 55 of the Act, with leave to reapply.

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*.

Dated: September 7, 2022

Residential Tenancy Branch