



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR-MT, FFT (Tenants)
OPR-DR, MNR-DR, FFL (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 July 26, 2022 (the “Tenants’ Application”), and applied as follows:

- To dispute a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities and for more time to dispute this notice
- To recover the filing fee

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

- For an Order of Possession based on a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities
- To recover unpaid rent
- To recover the filing fee

The Landlord appeared at the hearing. Nobody appeared at the hearing for the Tenants. I explained the hearing process to the Landlord. I told the Landlord they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Landlord provided affirmed testimony.

Tenants' Application

Rule 7.3 of the Rules states:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Given the Tenants did not appear at the hearing, and the Landlord did, the Tenants' Application is dismissed without leave to re-apply.

Service

The Landlord submitted evidence prior to the hearing. I addressed service of the hearing package and evidence for the Landlord's Application.

The Landlord testified that the hearing package and evidence for the Landlord's Application was sent to the Tenants at the rental unit by registered mail and that Tracking Numbers 935 and 949 relate to this. The Landlord submitted documentary evidence of service with Tracking Numbers 935 and 949 on it. I looked Tracking Numbers 935 and 949 up on the Canada Post website which shows the packages were sent October 20, 2022, and unclaimed after notice cards were left October 21, 2022.

Based on the undisputed testimony of the Landlord, documentary evidence of service and Canada Post website information, I find the Tenants were served with the hearing package and Landlord's evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "Act"). The Tenants cannot avoid service by failing to pick up registered mail. Pursuant to section 90(a) of the *Act*, the Tenants are deemed to have received the hearing package and Landlord's evidence October 25, 2022. I find the Tenants were served with the hearing package and Landlord's evidence well before the hearing and in sufficient time to prepare for and appear at the hearing.

The Landlord testified that the Tenants were removed from the rental unit November 26, 2022. The Landlord does not require an Order of Possession and this request is dismissed without leave to re-apply.

Amendment to Landlord's Application

The Landlord sought to amend the Landlord's Application. The Landlord submitted an Amendment Request December 04, 2022. The Amendment Request relates to a compensation request. The Landlord testified that they posted the Amendment Request to the door of the rental unit December 04, 2022. The Landlord said they did not provide proof of service of the Amendment Request. The Landlord stressed that this was a very difficult tenancy, the Tenants did not tell the Landlord where they were moving to and the Landlord did their best to serve the Tenants.

Rule 4.6 of the Rules addresses serving Amendment Requests and states:

As soon as possible, copies of the Amendment to an Application for Dispute Resolution form and supporting evidence must be produced and **served upon each respondent by the applicant in a manner required by section 89** of the Residential Tenancy Act...(emphasis added)

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution form and supporting evidence as required by the Act and these Rules of Procedure.

In any event, a copy of the amended application and supporting evidence should be served on the respondents as soon as possible and must be received by the respondent(s) not less than 14 days before the hearing.

Section 89(1) of the *Act* applies to applications for compensation and 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:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord...
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is 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)...[order for substituted service]
- (f) by any other means of service provided for in the regulations [by email to an email address provided as an email address for service]

The Landlord was not permitted to serve the Tenants at the rental unit after the Tenants were removed from the unit and the unit ceased being their residence. Further, posting documents to the door is not a method of service permitted under section 89(1) of the *Act* for Amendment Requests related to compensation.

I told the Landlord I was not satisfied of service of the Amendment Request and therefore would not allow the Landlord's Application to be amended. The Landlord can re-apply for the compensation claimed in the Amendment Request. The Landlord will have to serve the Tenants in accordance with the *Act* and Rules and will need to apply for substituted service of their Application for Dispute Resolution if they cannot serve the Tenants in accordance with the *Act*. This decision does not extend any time limits set out in the *Act*.

I proceeded to hear the Landlord's Application in relation to unpaid rent and the filing fee. The Landlord was given an opportunity to present relevant evidence and make relevant submissions. I have considered the evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to recover unpaid rent?
2. Is the Landlord entitled to recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted. The tenancy was for a fixed term starting May 01, 2022, and ending April 30, 2023. Rent was \$3,000.00 per month due on the

first day of each month. The Landlord testified that the Tenants did not pay a security deposit.

The Landlord testified that the Tenants did not pay rent for July to November of 2022. The Landlord testified that the Tenants did not have authority under the *Act* to withhold this rent.

The Landlord sought a substituted service order to allow the Landlord to mail any orders issued to the Tenants at Tenant A.D.'s place of work as shown on the application for tenancy submitted.

The Landlord submitted documentary evidence of unpaid rent including 10 Day Notices, an email to the Tenants about rent and text messages to the Tenants about rent.

Analysis

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

Section 26(1) of the *Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Based on the written tenancy agreement, I accept that the Tenants were required to pay \$3,000.00 in rent by the first day of each month.

Based on the undisputed testimony of the Landlord, 10 Day Notices, email to the Tenants about rent and text messages to the Tenants about rent, I accept that the Tenants failed to pay rent from July to November of 2022.

Based on the undisputed testimony of the Landlord, I accept that the Tenants did not have authority under the *Act* to withhold rent.

I award the Landlord \$15,000.00 in unpaid rent being rent for July to November of 2022. I acknowledge the Tenants were removed from the rental unit November 26, 2022, and I am awarding the Landlord unpaid rent for all of November. I do so because rent is due on the first day of each month and therefore the Tenants owed the Landlord \$3,000.00 November 01, 2022, and were still living in the rental unit at this point. Further, I find November 26, 2022, to be very late in the month and therefore find it appropriate that the Landlord be awarded rent for all of November.

Given the Landlord has been successful in the Landlord's Application, I award them recovery of the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlord is awarded \$15,100.00, and is issued a Monetary Order in this amount.

In relation to the substituted service request, I decline to allow the Landlord to mail the Monetary Order to Tenant A.D.'s place of work as shown in the application for tenancy submitted. The application for tenancy was signed April 25, 2022, almost eight months ago. I am not satisfied based on the application for tenancy alone that Tenant A.D. continues to work for the same employer or that Tenant A.D. would receive documents mailed to the employer. Further, I do not accept that Tenant C.R. would receive documents mailed to the employer.

The Landlord can re-apply to the RTB for a substituted service order either submitting further compelling evidence that the Tenants would receive documents mailed to the employer or seeking a different method of service. For example, if the parties regularly and recently communicated by email or text message, the Landlord could apply for substituted service by one of these methods. I also note that the Landlord can serve the Tenants in person if the Landlord knows where to personally locate the Tenants but does not know their address.

Conclusion

The Landlord is issued a Monetary Order for \$15,100.00. This Order must be served on the Tenants and, if the Tenants do not comply with the Order, it may be filed in the Provincial Court (Small Claims) and enforced 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: December 19, 2022

Residential Tenancy Branch