



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ATIRA PROPERTY MANAGEMENT
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC

Introduction

This hearing dealt with the Landlord's application for Dispute Resolution filed under the *Residential Tenancy Act* (the "Act") on August 24, 2022. The Landlord applied to enforce a One-Month Notice to End Tenancy for Cause (the "Notice") issued on July 20, 2020. The matter was set for a conference call.

Two Agents for the Landlord (the "Landlord"), the Tenant, the Tenant's Advocate and the Tenant's Social Worker attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue to be Decided

- Is the Landlord entitled to an order of possession to enforce the Notice issued on July 20, 2022?

Background and Evidence

The tenancy agreement recorded that the tenancy began on November 3, 2020, that rent was \$375.00 per month, and the Landlord is holding a \$187.50 security deposit for this tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that they served the Notice to end tenancy to the Tenant on July 20, 2022, by posting the Notice to the front door of the rental unit. The Landlord provided a copy of the Notice into documentary evidence.

The reason checked off within the Notice is as follows:

- *Tenant or a person permitted on the property by the tenant has:*
 - *Significantly interfered with or unreasonably disturbed another occupant or the landlord*
 - *Seriously jeopardized the health or safety of lawful right of another occupant or the landlord*
 - *Put the landlord's property at significant risk*
- *Tenant or person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property*
- *Tenant or person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord*
- *Tenant or person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord*

The Tenant testified that they had not been served with a Notice to end their tenancy.

The Landlord was asked to prove service of the Notice to end this tenancy. The Landlord testified that the Notice was posted to the front door of the rental unit on July 20, 2022, and that they had provided a proof of service form signed by two of the Landlord's agents into documentary evidence.

The Landlord was asked if anyone other than an agent of the landlord has witnessed the service of this Notice, or if any other documents had been provided that would substantiate this service. The Landlord testified that due to their internal confidentiality

policies, they were unable to use third parties as a witness or provide the camera footage that would show this service.

Analysis

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

I find that the parties, in this case, offered conflicting verbal testimony regarding the service of the Notice to end tenancy that the Landlord is seeking to enforce during these proceedings. In the instance where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, it is the Landlord who holds the burden of proof regarding the service of their Notice to end this tenancy.

I have reviewed the Landlord's proof of service document and noted that this document shows one agent of this Landlord acted as the witness to the proof of service for another agent of this same Landlord. Having two agents of the same landlord, namely persons who are empowered to act in the interests of the Landlord, act as a witness to the benefit of the Landlord introduces an apprehension of bias and does not provide sufficient objectivity to show the service of that document where the act of service is in dispute. This leads me to determine, that I can neither rely solely on the document itself nor the testimony from the Landlord's Agents to prove this service.

I have reviewed the entirety of the Landlord's testimony and documentary evidence submitted for these proceedings, and I find that the Landlord has not submitted anything other than the proof of service form to substantiate service of the Notice to end tenancy. Therefore, in the absence of further supporting evidence, I find that the Landlord has not provided sufficient evidence to my satisfaction to prove service of the Notice to end tenancy to the Tenant.

Consequently, I must dismiss the Landlords' claim to enforce this Notice to end tenancy in its entirety.

Conclusion

I dismiss the Landlord's application in its entirety.

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: January 13, 2023

Residential Tenancy Branch