



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AUTUMN POINT INVESTMENTS - A.P.I.L
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR

Introduction

This matter initially proceeded by way of a Direct Request Application filed by the Landlord under the Residential Tenancy Act (the “Act”), for an order of possession to enforce a 10-Day Notice for Unpaid Rent and Utilities (the Notice) issued on June 28, 2022.

The Direct Request proceedings were adjourned on September 12, 2022, stating that a question of a possible Waiver of the Notice to End Tenancy had arisen during that process that could only be addressed through a participatory hearing. This hearing was scheduled to deal with the adjourned Direct Request Application, and with the matter set for a conference call.

Two Agents of the Landlord (the “Landlord”) attended the hearing and were each affirmed to be truthful in their testimony. As the Tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. Section 59 of the Act states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord submitted a Canada post tracking number as evidence they served the interim decision from the Direct Request proceedings and Notice of this Hearing by registered mail on September 15, 2022. Section 90 of the Act determines that documents served in this manner are deemed to have been served five days later. I find that the Tenants had been duly served in accordance with the Act.

The Landlord was provided with the opportunity to present his 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.

Issues to be Decided

- Is the Landlord entitled to an order of possession pursuant to section 46 of the Act?

Background and Evidence

The Landlord's application was initiated through the Direct Request Process, and through that process, the Landlord was directed to attend these proceedings to answer the question and provide evidence of a possible waiver of their Notice to end this tenancy.

The Landlord testified that they served the Tenants with a rent receipt on September 13, 2022, that advised the Tenants that the \$700.00 July 2022 rent payment was "for use and occupancy only."

The Landlord was asked to present a copy of this receipt and proof of its service into documentary evidence for these proceedings. The Landlord testified that they had not submitted this evidence for this processing.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In the absence of documentation to show service of a receipt indicating "for use and occupancy only," I find that the Landlord has failed to prove to my satisfaction the service of this required document.

Therefore, I find that there is a lack of evidence before to show that the Landlord had informed the Tenants that the rent payment made in July 2022 was accepted by the Landlord solely for "use and occupancy only."

As the landlord has not provided evidence that the Tenants were informed that the payment made was being accepted without reinstating the tenancy, I find that the Landlord's conduct in accepting the rent payment in July 2022, without issuing a receipt indicating "for use and occupancy only," created ambiguity about the Landlord's intentions regarding this tenancy. Therefore, I find on a balance of probabilities that this ambiguity in the Landlord's conduct amounts to a waiver of the Landlord's right to seek an Order of Possession.

As the Landlord has waived their rights to pursue an Order of Possession for the Notice issued on June 28, 2022. I find that the Landlord reinstated this tenancy by accepting rent payments, after the effective date of the 10-Day Notice without specifying that the payments were accepted for use and occupancy only. Consequently, I dismiss the Landlord's application for an Order of Possession.

Conclusion

I dismiss the Landlord's application and find that the 10-Day Notice dated June 28, 2022, is of no effect under 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 *Residential Tenancy Act*.

Dated: January 13, 2023

Residential Tenancy Branch