



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: CNR
Landlord: OPC, FFL

Introduction

The Tenant filed an Application for Dispute Resolution (the “Tenant Application”) on October 11, 2022, seeking cancellation of an end-of-tenancy notice served by their Landlord.

The Landlord filed an Application for Dispute Resolution (the “Landlord Application”) on January 14, 2023 seeking an order of possession, and the Application filing fee. The Landlord Application was crossed with the Tenant Application because it concerns the same tenancy matter between the parties.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on February 13, 2023. Both the Landlord and the Tenant attended the scheduled hearing. The Landlord confirmed they received the Notice of Dispute Resolution Proceeding from the Tenant Application, in person from the Tenant, on October 27, 2022.

Preliminary Matter – Landlord’s service of Notice of Dispute Resolution Proceeding

The Tenant stated they did not receive the Landlord’s Notice of Dispute Resolution Proceeding from the Landlord. The Landlord described using registered mail to serve the copy of the Notice of Dispute Resolution Proceeding, including their prepared evidence filed for the Landlord Application.

The Tenant stated they did not know anything about the Landlord Application. The Tenant lives in the basement rental unit; the Landlord lives upstairs. The Tenant described the situation with delivery of mail at the rental unit, where the Landlord withholds mail for some period of time, then notifies the Tenant to come pick up the mail directly. In the hearing, the Tenant stated the Landlord “refused” to give them mail.

The Landlord confirmed they notify the Tenant to pick up mail when they receive it at the rental unit property, from the front door. The Landlord stated they have a text message from the Tenant that they told the Tenant about the registered mail card on January 30, 2023. The Tenant responded to say they check the mailbox (which is locked) when notified to do so.

Despite the Landlord using registered mail to serve their Notice of Dispute Resolution Proceeding to the Tenant, I find this was not a reliable delivery method in this instance, owing to the Landlord living upstairs, and controlling the incoming mail at the rental unit property. The Landlord did not provide evidence that they notified the Tenant about the registered mail to them, and this lends believability to the Tenant’s account that they went to retrieve registered mail and it was not there.

In this situation, the registered mail method is not reliable, and the burden of proof is on the Landlord to show they delivered the Notice of Dispute Resolution Proceeding, and their evidence, in a reliable method. There are other methods of service available, ones that would be more reliable in this situation. The Landlord did not attempt delivery of the Notice of Dispute Resolution Proceeding in person, or by attaching a copy to the door of the rental unit.

Without proof from the Landlord of a successful registered mail delivery to the Tenant, I cannot grant that the Tenant was aware of the Landlord Application, and this prejudiced the Tenant as the Respondent to the Landlord Application. I make no consideration of any evidence provided by the Landlord in the Landlord Application because there is no surety that the Tenant viewed that evidence and was prepared to respond to it specifically.

For the reasons outlined above, I dismiss the Landlord’s Application, with leave to reapply. I dismiss the Landlord’s claim for compensation of the Application fee without leave to reapply. As a result of this conclusion, there is no order of possession to the Landlord stemming from their Application for an order of possession.

Preliminary Matter – the type of notice to end tenancy

On the Tenant Application, the Tenant identified the type of end-of-tenancy notice as a “10 Day Notice to End Tenancy for Unpaid Rent”. In the hearing, the Tenant described receiving a written note from the Landlord, with an indication on it that the tenancy would end at some date in the future. The Tenant also stated there was no reason stated by the Landlord on the written one-page letter.

The Tenant did not provide a copy of either a 10-Day Notice to End Tenancy for Unpaid Rent, or any other kind of end-of-tenancy notice. The Tenant provided no evidence with their Tenant Application.

The Landlord, via their agent in the hearing, stated they never issued any notice to the Tenant concerning unpaid or late rent. They clarified that they intended to end the tenancy via a One Month Notice to End Tenancy for Cause (the “One-Month Notice”) for miscellaneous reasons concerning the Tenant and their conduct.

I find the Tenant incorrectly identified the end-of-tenancy notice issued to them. I amend the Tenant Application in order to correctly identify the issue, as set out below.

Issue(s) to be Decided

Is the Tenant entitled to an order that the landlord cancel the One Month Notice?

If the Tenant is unsuccessful in their Application, is the Landlord entitled to an Order of Possession of the rental unit?

Background and Evidence

The Landlord presented that they served a one-page written notice to the tenant on October 3, 2022. This was when the Tenant paid rent to them in person on that date. The Tenant stated they did not receive this document from the Landlord directly, rather it was posted on their door on October 4th or 5th.

The Landlord made an inquiry to the Residential Tenancy Branch, who advised the Landlord to use a proper One-Month Notice form in order to end a tenancy. The Landlord presented that they used the correct form, and served this to the Tenant by

posting the document on the door on October 4. This was a similar reason to the first document they served to the Tenant, but the Landlord also made an indication that the Tenant was repeatedly late paying rent.

The Tenant did not provide a copy of the written document they received from the Landlord, purportedly to end the tenancy. The Tenant maintained they did not receive the form One-Month Notice from the Landlord.

The Landlord described their need to end the tenancy, because of their own marital situation which they described as further complicated because of the Tenant at the rental unit property. Additionally, the Tenant was repeatedly late paying rent.

Analysis

The *Act* s. 47 is the provision that deals with a landlord ending the tenancy for many different conditions. Here, the Landlord presented that they issued a one-month notice for reasons involving the Tenant's conduct that causes disturbance, and repeated late payment of rent.

In deciding on the end of tenancy, and whether the reasons for ending the tenancy are valid, the onus lies with a landlord to provide ample proof that the reasons are valid. More basically, regarding the validity of the notice to end tenancy, s. 52 states:

- 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) . . . state the grounds for ending the tenancy,
 - . . . and
 - (e) when given by a landlord, be in the approved form.

In this hearing, the Landlord did not submit a copy of the One-Month Notice in response to the Tenant's Application. I dismissed the Landlord Application because of the service issue, meaning any evidence the Landlord provided is not for my consideration. Because of this, I find the Landlord did not provide a copy of the correct document into evidence for my consideration. I therefore cannot verify if the document is correct, containing the mandatory information that the *Act* specifies.

The *Act* requires that notices to end tenancy by a landlord be in the approved form. The Landlord did not provide a copy of the One-Month Notice in response to the Tenant

Application and did not serve their own Notice of Dispute Resolution Proceeding and evidence in a correct manner. I therefore cannot verify the correctness of any form the Landlord served to the Tenant to end the tenancy. This is aside from the actual reasons thereof. The Landlord has not met the burden of proof to show the One-Month Notice is valid; therefore, I cancel any one-month notice issued by the Landlord. It is of no legal effect.

With the One-Month Notice cancelled, the tenancy will continue and there is no order of possession.

Conclusion

For the reasons outlined above, I order that the One-Month Notice, described as issued on October 4, 2022, is cancelled and the tenancy remains in full force and effect.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: February 14, 2023

Residential Tenancy Branch