



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, MNRT, MNDCT, RR, LRE, FFT, CNR, RP, LAT, OLC, OPR-DR, MNR-DR, FFL**

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties pursuant to the Residential Tenancy Act (the "Act") for Orders as follows:

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The tenant applied as follows:

- For cancellation of two separate 10 Day Notices to End Tenancy pursuant to section 46 of the Act
- For cancellation of the landlords' One Month Notice to End Tenancy for Cause pursuant to section 47 of the Act
- For repairs to the unit pursuant to section 32 of the Act
- For an order to reduce rent for repairs, services, or facilities agreed upon but not provided pursuant to section 65 of the Act
- For an order suspending or setting conditions on the landlord's right to enter to the rental property pursuant to section 70 of the Act
- For an order requiring the landlord to make repairs to the property pursuant to section 32 of the Act
- For an order authorizing the tenant to change the locks on the rental unit pursuant to section 31 of the Act
- For an order requiring the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

The landlord applied as follows:

- For a monetary order for unpaid rent pursuant to section 67 of the Act

- For an order of possession pursuant to section 55 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

While the respondent landlord attended the hearing by way of conference call, the applicant tenants did not, although I waited until 9:40 am in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 am. The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Rule 7.1 of the Rules of Procedure provides as follows:

7.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

The landlord was reminded to not recording the hearing pursuant to Rule of Procedure 6.11. The landlord was affirmed.

Severance

The tenants applied for several other orders in addition to cancellation of the three separate notices. These issues are not related to the dispute of the three separate notices and are therefore severed pursuant to Rule 2.3 of the RTB Rules of Procedure. The tenants have leave to reapply on these issues. This decision does not extend any time limits set out in the Act.

The only issues that will be determined in this hearing are the validity of the three separate notices, and whether the landlord is entitled to an order of possession for the rental unit.

Preliminary Issue – Service of Documents

The landlord testified that he served the following:

- a One Month Notice to End Tenancy for Cause (“One Month Notice”) dated November 9, 2022 with an effective date of November 9, 2022 on the tenants by

email. The landlord further stated that he placed the One Month Notice on the top of the mat in front of the rental unit.

- a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice #1") dated December 2, 2022 with an effective Date of December 12, 2022 on the tenants by email
- a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice #2") dated January 4, 2023 with an effective date of January 14, 2023 by posting it to the door of the rental unit on January 4, 2023

Preliminary Issue – Service of the One Month Notice

The landlord testified that he served the One Month Notice by placing it on the mat at the front door of the rental unit. He provided no proof of service in evidence.

Additionally, section 88 of the Act allows service by attaching the notice to the door or other conspicuous place. Leaving it on the front mat does not comply with this section as the One Month Notice was not attached to the rental unit. Therefore I find the landlord has not established that the One Month Notice was served in accordance with the Act.

Preliminary Issue – Service of 10 Day Notice #1 dated December 2, 2022

The landlord testified that 10 Day Notice #1 was served on the tenants by email.

The only proof of service provided in evidence by the landlord was 10 Day Notice #1 with a check mark on the document confirming that it was served by email. Section 88 of the Act does not permit service of documents by email. The landlord has not established that the parties agreed to email as a form of service. No proof of service documents were produced by the landlord showing that he served the notice by some means other than by email. I find that the landlord has not established that the tenants were served with 10 Day Notice #1 in accordance with the Act.

Preliminary Issue – Service of 10 Day Notice #2 dated January 4, 2023

The landlord testified that he served 10 Day Notice #2 by posting it to the door of the rental unit on January 4, 2023. The only proof of service provided in evidence by the landlord was 10 Day Notice #2 with a check mark on the document confirming that it was served by email. Section 88 of the Act does not permit service of documents by email. The landlord has not established that the parties agreed to email as a form of service. The landlord provided no other proof in evidence that 10 Day Notice #2 was

served on the tenants by other means. I find that the landlord has not established that the tenants were served with 10 Day Notice #2 in accordance with the Act.

Service of the Landlord's Dispute Notice

The landlord did provide Canada Post tracking information in evidence showing a package accepted by Canada Post on January 14, 2023. I find based on the date that the package was accepted, that the package contained the landlord's dispute notice and evidence in support of the application. I find that the tenants were properly served with the landlord's dispute notice and evidence on January 19, 2023 pursuant to sections 88, 89, and 90 of the Act.

Tenants' Applications

The tenants applied to dispute the One Month Notice dated November 9, 2022 and 10 Day Notice #2 dated January 4, 2023.

As I have found that the landlord did not establish that the tenants were served with either notice in accordance with the Act, I find that both notices are not valid. I grant both of the tenants' applications disputing the notices. Both the One Month Notice and 10 Day Notice #2 are cancelled.

As the tenants did not attend the hearing, they are not entitled to recovery of their filing fees for their applications.

Landlord's Application

The landlord applied for an order of possession with respect to 10 Day Notice #1. The tenant did not file a dispute in respect of 10 Day Notice #1. Section 46(5) of the Act states:

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

The landlord has not established that the tenants received 10 Day Notice #1. Therefore I cannot apply the conclusive presumption contained in Section 46(5).

Section 55(2) of the Act states:

(2)A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

(b)a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;

I cannot find that the landlord gave the tenants a notice to end tenancy as the landlord has not established that the 10 Day Notice #1 was served by the landlord. Therefore 10 Day Notice #1 is cancelled and the landlord is not entitled to an order of possession based on 10 Day Notice #1.

As the landlord is unsuccessful in his application he is not entitled to recover the filing fee.

Conclusion

The landlord's application is dismissed in its entirety.

The tenants' applications to cancel the One Month Notice and Dispute Notice #2 are granted. The tenancy shall continue until it is ended in accordance with 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: February 16, 2023

Residential Tenancy Branch