



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding Devon Properties Ltd., 7350 FRASER HOLDING LTD
TRANSPACIFIC REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Landlord: OPR-DR x 2
Tenant: CNR, MNDCT, RR, RP, OLC, FFT

Introduction

The Tenant filed an Application for Dispute Resolution (the “Application”) on November 16, 2022 seeking

- a. a cancellation of the Landlord’s 10-Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice”)
- b. compensation for monetary loss
- c. a reduction in rent for repairs not undertaken by the Landlord
- d. repairs made to the rental unit
- e. the Landlord’s compliance with the legislation and/or the tenancy agreement
- f. reimbursement of the Application filing fee.

The Landlord filed an Application by Direct Request on November 21, 2022 for an order of possession in line with an end-of-tenancy notice, and compensation for unpaid rent. The direct request procedure was not available in this instance where the Tenant’s Application was already in place.

The Landlord filed another Application by Direct Request on December 16, 2022 for an order of possession in line with another end-of-tenancy notice, and compensation for unpaid rent. This second Application was joined to the Tenant’s Application already in place.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on March 27, 2023. In the conference call hearing, I explained the process and provided the attending parties the opportunity to ask questions.

Preliminary Matter – Tenant’s service of Notice of Dispute Resolution Proceeding and evidence, and the Landlord’s response materials

The Landlord who attended the hearing presented that they became the property manager at the rental unit on December 20, 2022. I have amended both parties’ Applications to provide the current name of the Landlord as presented in the hearing. For reference in this decision, I refer to the previous Landlord as “Landlord TP” to distinguish them from the current Landlord, referred to herein as “Landlord”.

The Tenant finalized their Application in the Residential Tenancy Branch on November 16, 2022, and the Residential Tenancy Branch provided the Notice of Dispute Resolution Proceeding to the Tenant on November 23, 2022.

The Tenant presented that they served the Notice of Dispute Resolution Proceeding to the Landlord TP at the Landlord TP’s rental property management office in the building at the rental unit property. This was on November 26, and the Tenant provided a picture of that information attached to the door of the Landlord TP’s office door.

The Landlord acknowledged receipt of this material from the prior Landlord TP, in what they termed a “takeover process”. For the purposes of the hearing of this Tenant Application, I find the Tenant served the Notice of Dispute Resolution Proceeding and the evidence they intended to rely on for this hearing as required in this proceeding.

The Landlord provided materials for this hearing to the Residential Tenancy Branch on March 19, 2023. This was material filed in response to the Tenant’s Application. In the hearing, the Landlord set out that they served this material to the Tenant on the same day, March 19, attached to the rental unit door.

The Tenant stated they did not receive this material. They cited the only communication they received from the Landlord as via email, with no documents of any kind attached to the door.

I find the Landlord did not definitively prove service in this method to the Tenant for their materials in this hearing; therefore, I omit the Landlord's materials in this matter from consideration.

Preliminary Matter – unrelated issues

At the outset, I advised both parties of the immediate issues concerning the end-of-tenancy notice issued by the Landlord. This is: a 10-Day Notice issued on November 9, 2022. Relevant to this is a second 10-Day Notice purportedly issued by the Landlord on December 5, 2022.

The *Residential Tenancy Branch Rules of Procedure* permit an arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. Rule 2.3 describes "related issues", and Rule 6.2 provides that an arbitrator may refuse to consider unrelated issues. It states: ". . . the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply."

The matter of urgency here is the possible end of this tenancy. The most important issue to determine is whether or not the tenancy is ending, based on either of the notices to end tenancy issued by the Landlord. By Rule 6.2, I do not consider the Tenant's other issues concerning the repairs in the rental unit, a reduction of rent for that reason, compensation, or the Landlord's compliance, items b. to e. listed above in the Tenant's Application. By Rule 2.3, these issues are unrelated, and I amend the Tenant's Application to exclude these issues. The Tenant has leave to reapply on these other issues. This means they may file a new and separate application to address this, and this does not preclude proper consideration of these issues by another arbitrator.

Preliminary Matter – Landlord's November 21, 2022 Application

In the hearing, the Landlord provided two registered mail tracking numbers, ostensibly for the Notice of Dispute Resolution Proceeding and materials they sent to the Tenant for their first application for an order of possession and compensation. This was in line with the 10-Day Notice served to the Tenant on November 9, 2022.

The Residential Tenancy Branch provided the Notice of Dispute Resolution Proceeding to the Landlord via email on November 28, 2022.

One registered mail tracking number (RN#####681CA) shows registered mail sent on November 23, 2022. Logistically, it is impossible that the Landlord sent a Notice of Dispute Resolution Proceeding to the Tenant on this date, for the Landlord's November 21, 2022 Application, because the Residential Tenancy Branch did not send that document to the Landlord until November 28, 2022. I find this registered mail number does not refer to materials provided by the Landlord to the Tenant for this hearing.

The other registered mail tracking number that the Landlord provided in the hearing (RN#####704CA) shows registered mail sent on November 30, 2022. This item was returned to the sender as unclaimed. The Tenant stated they did not ever receive notification of this registered mail from the Landlord, and at no time even opened any envelopes purportedly sent by the Landlord TP. The only communication they had from the current Landlord was via email.

The previous Landlord TP was the agency that started this Application at the Residential Tenancy Branch in November 2022. This precedes the current Landlord's involvement with the tenancy, and their knowledge of this Application at the Residential Tenancy Branch. I find the Landlord here did not prove definitively that service was completed to the correct Tenant address via registered mail, or any other method of service concerning the important matter of notifying the Tenant of a pending Application. The Landlord in the hearing listed two registered mail tracking numbers; however, a definite link is not established from the #704CA number tracking number to the Tenant's address. Minus that link, I am not satisfied that the Landlord notified the Tenant of this Application.

I dismiss this November 21, 2022 Application from the Landlord; however, I grant leave to reapply. I note I am statutorily bound by the *Act* s. 55 to consider an order of possession, as listed in the issues for consideration listed below.

Preliminary Matter – Landlord's December 16, 2022 Application

In the hearing the Landlord stated they did not know about this Application; indeed, they did not list this Application file number. I find it more likely than not that the Landlord (or their predecessor the Landlord TP) did not serve notice of this separate Application to the Tenant. There is no evidence in this record at the Residential Tenancy Branch of the Landlord's service.

The current Landlord could not speak to this matter directly. I dismiss this December 16, 2022 from the Landlord, with leave to reapply.

Preliminary Matter – Tenant’s subsequent Application hearing in April 2023

The Tenant inquired on the possibility of joining another separate Application they made to the Residential Tenancy Branch. This was to dispute another separate 10-Day Notice issued by the current Landlord.

Given the complexity of the present Applications in this matter, I decline to address this separate Application. I devoted no time to the Application, its service, or the issues therein in this present hearing. This separate matter shall proceed on its separate scheduled hearing date in April 2023.

Issues to be Decided

Is the Tenant entitled to cancellation of the 10-Day Notice?

If the Tenant is unsuccessful in their Application, is the Landlord entitled to an order of possession in line with the 10-Day Notice as per s. 55 of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee, as per s. 72 of the *Act*?

Background and Evidence

In the hearing the Tenant described receiving a 10-Day Notice from the Landlord. They described being branded by the Landlord as someone who does not pay rent in this situation, after a disagreement with the Landlord over whether they had paid a security deposit when the tenancy started in September 2022.

The disagreement with the Landlord continued into the last couple of months, where the Tenant fundamentally objected to paying their rent to the Landlord via specialized portal that covers that objective. The Tenant’s objection was that the portal is not in line with the tenancy agreement they have in place. Over the past couple of months the Tenant has made payments to the Landlord using bank drafts which is a form of a cheque, and

the Landlord did not express any difficulty or objections to this method of payment from the Tenant.

The Tenant submitted a copy of the November 9, 2022 10-Day Notice. This set the end-of-tenancy date for November 19, 2022. Page 2 of the document sets out that the Tenant failed to pay the rent amount of \$2,865 due on October 1, 2022. This set out the base amount of rent at \$2,720, \$95 for parking, and an additional \$50 NSF fee, and noted “following written demand on: (DD/MM/YYYY)”.

The copy of the document in the Tenant’s evidence is two pages of a three-page document.

In the hearing, the Landlord stated they were aware this document was inaccurate, as issued by the previous Landlord TP. The Tenant stated they were aware that the Landlord TP discovered the month recorded on page 2 – as October 2022 – was not correct.

The Landlord similarly stated this November 9th 10-Day Notice was “incorrect” in its reference to October 1, 2022. The Landlord stated the Landlord TP issued a separate 10-Day Notice on November 23, 2022. This separate 10-Day Notice does not appear in the Tenant’s evidence for this hearing.

The Tenant raised their objections to the current Landlord’s rent payment method. The Tenant acknowledged that they paid March 2023 rent via bank draft. The Landlord set out that they missed Tenant’s payment of rent for November and December 2022, and February 2023. As on their Application for this hearing, the Tenant presented that they did in fact pay for the month of November 2022.

In the hearing, the Landlord stated they were still seeking to end the tenancy in line with an end-of-tenancy notice for non-payment of rent for the month of November 2022. The Landlord maintained their position that the Tenant did not pay November 2022 rent.

The Tenant also presented a single-page – labelled as page 1 of 3 – in their evidence. This is the first page of a separate 10-Day Notice signed by the Landlord on December 5, 2022. This set the end-of-tenancy date for December 15, 2022.

Analysis

Any document presented by a landlord to end a tenancy under various sections of the *Act* is subject to s. 52 of the *Act* which strictly governs form and content.

For both of the two 10-Day Notices the Tenant presented in their evidence (*i.e.*, those signed by the Landlord on November 9 and December 5, 2022), I find they are incomplete in the Tenant's record. The onus to prove an end-of-tenancy notice is on the Landlord. I omit the Landlord's evidence from consideration as set out above; therefore, there is no complete copy of a signed 10-Day Notice. I cannot issue an order of possession in this instance, where s. 55(1)(a) sets the strict requirement that a notice to end tenancy must comply with s. 52.

I dismiss both the November 9, 2022 and December 5, 2022 10-Day Notices for this reason.

Additionally, the Landlord cited an incorrect record on page 2 of the November 9, 2022 with its reference to an October 1, 2022 rent amount owing. I find this acknowledgement from the Landlord (inherited as it was from the prior Landlord TP) constitutes a cancellation of that 10-Day Notice.

I draw the Tenant's attention to s. 26 of the *Act*. This sets the strict obligation on the Tenant to pay rent "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." I clarified for the parties in the hearing that there appeared to be no authorization of any kind from the Residential Tenancy Branch for a deduction or withholding of rent by the Tenant. The Tenant cited difficulties with their method of payment to the Landlord; however from what I heard from the parties in the hearing it appears that a bank draft is an acceptable method of payment.

As set out above, I cannot verify the completeness of any form the Landlord served to the Tenant to end the tenancy. The Landlord has not met the burden of proof to show the 10-Day Notice is valid; therefore, I cancel any 10-Day Notice issued by the Landlord. It is of no legal effect.

With both the 10-Day Notices cancelled, the tenancy will continue and there is no order of possession. Similarly, I grant no compensation to the Landlord where the Tenant's Application here for a cancellation of the 10-Day Notice is successful.

As the Tenant was successful in this application, I find the Tenant is entitled to recover the \$100 filing fee paid for this application. I authorize the Tenant to withhold the amount of \$100 from one future rent payment.

Conclusion

I grant the Tenant's Application for cancellation of the 10-Day Notice. There is no order of possession to the Landlord.

I dismiss each of the Landlord's Applications for an order of possession and compensation for rent amounts owing. The Landlord has leave to reapply on these matters.

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: March 28, 2023

Residential Tenancy Branch