



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

The Landlord applied for dispute resolution (“Application”) by way of an *ex parte* Direct Request Proceeding under section 55(4) of the *Residential Tenancy Act* (the “Act”). The Landlord requests an Order of Possession, a Monetary Order for unpaid rent and authorization to recover the filing fee for their Application from the Tenant.

During the direct request proceeding it was determined by the Adjudicator that the Proof of Service document relating to the 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) was not signed by a witness.

As a result, it was ordered that the proceeding be adjourned and reconvened as participatory hearing under section 74 of the Act.

Both the Landlord and the Tenant attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

The Landlord testified that the Notice of Dispute Resolution Package (“Materials”) in relation to the *ex parte* Direct Request Proceeding were served on the Tenant via registered mail on January 11, 2023. The Materials in relation to the adjourned participatory hearing were served on the Tenant on March 6, 2023 via registered mail. The Tenant confirmed receipt of both sets of Materials from the Landlord.

Therefore, I find that pursuant to section 89 of the Act that the Landlord’s Materials were sufficiently served to the Tenant.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The attending parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

Both parties agreed that the tenancy started on October 20, 2022. Rent is \$4,200.00 per month due on the first day of the month. A security deposit of \$2,100.00 was paid by the Tenant which the Landlord still holds. A copy of the written tenancy agreement was entered into evidence by the Landlord. The Tenant still occupies the rental unit.

The Landlord testified that they received the security deposit from the Tenant at the start of the tenancy. They were also expecting the pro-rated amount of rent due for part of the month of October 2022 but the Tenant stated they needed more time to get the funds to them. The Landlord allowed the Tenant to move in to the rental unit before receiving the first rent payment.

The Landlord stated a partial payment for the rent due October 20, 2022 was received but the rent payments due on November 1, 2022 and December 1, 2022 were not received.

The Landlord testified they served the Notice dated December 18, 2022 on December 19, 2022 by attaching it to the door of the rental unit. A copy of the Notice was submitted into evidence by the Landlord and indicates that there was outstanding rent totalling \$9,436.74 as of December 1, 2022.

The Landlord stated that a partial rent payment of \$3,000.00 was received in December 2022 but no other payments for rent have been made by the Tenant since the Notice was issued. As of April 1, 2023, the total outstanding rent amounted to \$23,236.74.

The Tenant testified that they had not been present at the rental unit for much of December 19, 2022 as they had left for a few days that morning. The Tenant pointed

out that on the Notice, the method of service was specified as in-person but the Proof of Service document stated the Notice had been attached to the door on December 19, 2022.

The Tenant referred me to photographs submitted as evidence by the Landlord showing the Notice wedged into a gap in the door frame. They drew my attention to the distinction between a document being wedged in a gap and being attached. The Tenant stated that this was relevant as there were high winds in the location of the rental unit and things could easily get blown away.

The Tenant testified they never received the Notice. They stated their 16 year old daughter told them they were asked to sign something to say they had received documents. The Tenant stated they never had sight of the document their daughter signed, nor the documents they apparently received.

The Tenant did not contest the amount of outstanding rent put forward by the Landlord.

The Landlord stated they had tried to serve the Notice in-person on December 18, 2022, not December 19, 2022, and a lady opened the door of the rental unit. They did not know who the lady was or how old they were but they gave the Notice to them and asked them to sign to say they had received the Notice. The document signed by the unknown individual was not entered into evidence by either party.

The Landlord testified that as they were not sure if the lady was a minor or not, they opted to attach the Notice to the door too. They did not have a witness present but did take photographs of the Notice in the gap of the door.

Analysis

Section 46(1) of the Act allows a landlord to end a tenancy if the tenant does not pay rent on time by issuing a 10 Day Notice to End Tenancy for Unpaid Rent. The Notice to End Tenancy should be served in a manner that complies with section 88 of the Act which confirms how to give or serve documents generally.

Rule 6.6 of the Residential Tenancy Branch *Rules of Procedure* states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Therefore, in this case the onus is on the Landlord to prove, on the balance of probabilities, that the Notice was served in accordance with the Act.

In their testimony, the Landlord was not consistent on the method of service or when the Notice was served. In the hearing they indicated the Notice was served on December 18, 2022 and December 19, 2022 but finally clarified that it was the former date. The Proof of Service document indicates the Notice was served on December 19, 2022.

The Notice indicates it was served in-person, though the Proof of Service indicates the Notice was attached to the door of the rental unit. The Landlord's testimony regarding serving the Notice to an unknown individual leads me to conclude that the Notice was not served in accordance with section 88(e) of the Act.

The Landlord had no witness to add weight to their testimony indicating the Notice was served by attaching to the door of the rental unit. Though photographs of the Notice wedged in the door frame were entered into evidence by the Landlord, I find that these in and of themselves do not prove service.

Based on the Landlord's vague and inconsistent testimony I find that the Landlord failed to prove on the balance of probabilities that the Notice was served in accordance with the Act. Therefore, I find that the Notice is of no force or effect and the tenancy continues.

I dismiss the Landlord's Application without leave to reapply.

As the Application was not successful, the Landlord must bear the cost of the filing fee.

Conclusion

The Application is dismissed without leave to reapply.

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

Dated: April 05, 2023