

DECISION

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) under sections 46 and 55 of the Act
- a Monetary Order for unpaid rent under section 67 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 72 of the Act

Landlord JZ and witness PS attended the hearing.

Other tenants SGM, KS and YP also attended the hearing.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

I find that Tenant DNT was not served the Notice of Dispute Resolution under the Act or at all.

Preliminary Matters

This hearing was a review consideration of a decision and associated orders issued on July 18th, after the previous hearing. This application was heard together with three other parallel applications against three other tenants of the same rental property, and this decision is issued in parallel with my decisions in the other applications.

Although the Landlord was not served by the Tenant with the Notice of Review Hearing, I find that the Landlord did not suffer any prejudice thereby. The Landlord was provided a copy of the Review Consideration Decision and the Notice of Review Hearing directly from the Residential Tenancy Branch by email. As a consequence, the review hearing was conducted as scheduled.

Issues to be Decided

Is the Landlord entitled to an Order of Possession based on the 10 Day Notice?

Is the Landlord entitled to a Monetary Order for unpaid rent?

Is the Landlord entitled to recover the filing fee for this application from the Tenant?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began on January 1st, 2024, with a monthly rent of \$800.00, due on first day of the month.

In the first hearing, none of the tenants appeared, and JZ testified that the Tenant only paid \$450 in May rent and failed entirely to pay rent on June 1st, 2024, and as a result, he issued a 10 Day Notice on the following day, June 2nd, and served it to the Tenant, along with other tenants at the same address that evening. JZ's spouse went with JZ and signed a Proof of Service form as a witness.

JZ testified that the Tenant paid the outstanding rent of \$1,150 on June 19th.

JZ also testified that he served the Notice of Dispute Resolution to the Tenant in person on the evening of June 21st. JZ's spouse went with JZ and signed a Proof of Service form as a witness.

In the second hearing, the Tenant DNT did not appear, but the other tenants SGM, YP and KS appeared.

Each testified that they had not received either a 10 Day Notice or the Notice of Dispute Resolution from the Landlord. SGB testified that he received orders dated July 18th on his door on July 20th at night; KS and YP stated that the orders were put on their doors on July 19th at night.

KS testified that on July 25th, 2024, he was evicted from the rental property by bailiffs.

I enquired whether PS was available to testify, and JZ said that although she was at work, she would be able to testify. After a significant interlude in which JZ contacted PS to request her to testify, PS attended the hearing. She testified that the last time she went to the rental property was approximately two weeks previously to evict KS. She then stated that she also attended on June 2nd in the evening to serve a 10 Day Notice. She was asked twice whether she had visited the rental property at any point between the two visits and said she had not. When questioned by JZ whether she recalled visiting the rental property on June 21st to deliver the Notice of Dispute Resolution, she said she had done so.

Analysis

Is the Landlord entitled to an Order of Possession based on the 10 Day Notice?

Is the Landlord entitled to a Monetary Order for unpaid rent?

The Landlord testified that he had served each document to each of four tenants at the rental property in person. In both cases, the Landlord provided a signed proof of service form, each of which was signed by his wife, PS.

When PS testified, her testimony with respect to the June 2nd service of the 10 Day Notices sounded rehearsed. More importantly, however, when twice asked if she had attended the rental property between June 2nd and July 19th (when the Landlord appears to have served the orders of possession), she twice said she did not. Her later testimony, under leading questioning from JZ, did not, in such a context, appear credible.

SGM, YP and JS, who are respondents in the parallel proceedings, each denied that the Landlord served them either a 10 Day Notice or a Notice for Dispute Resolution. In contrast to that of PS, I found the testimony of SGM, YP and KS to be clear and forthright.

The circumstances also weigh against the plausibility of the Landlord's claims of service: both SGM and KS immediately applied for a review consideration of the previous decision and attended this hearing, but under the Landlord's claims, neither applied to dispute a 10 Day Notice served upon them, nor participated in the adjudication of their applications prior to their application for review consideration.

I also note with concern that the Landlord appears to have secured a writ of possession and evicted KS when the Order of Possession had not been served to KS seven days prior to the execution of the writ.

Although the Tenant did not appear, the principal issue at hand was the service of the various Notices by the Landlord, who claimed to have done so at the same times as he served the other tenants. I have no reason to believe that the Landlord would have served the Tenant alone.

On the basis of the whole of the foregoing, I find that the Landlord did not serve either the 10 Day Notice or the Notice of Dispute Resolution on the Tenant.

Consequently, I find that the Landlord's Proof of Service of a Notice to End Tenancy was falsely completed; and that the Landlord's Proof of Service of the Notice of Dispute Resolution was likewise falsely completed.

I further find that the Order of Possession was obtained fraudulently. That order is cancelled and of no force or effect.

The decision of July 18th, 2024 is set aside.

The Landlord's application is dismissed without leave to reapply.

Is the Landlord entitled to recover the filing fee for this application from the Tenant?

As the Landlord was not successful in this application, the Landlord's application for authorization to recover the filing fee for this application from the Tenant under section 72 of the Act is dismissed, without leave to reapply.

Conclusion

I set aside the decision of July 18th, 2024. The Order of Possession, dated July 18th, 2024 are cancelled.

The Landlord's application is dismissed in its entirety, 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: August 12, 2024

Residential Tenancy Branch