



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR-PP, CNR-MT

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlords applied for:

- an order of possession for unpaid rent pursuant to section 55;

The tenants applied for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the landlords served the tenants with the notice of hearing package and the submitted 7 documentary evidence files via Canada Post Registered Mail on January 3, 2021. The tenants confirmed that no documentary evidence was submitted in response of the landlords' application. I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the *Act*.

Both parties confirmed the tenants served the landlords with the notice of hearing package via Canada Post Registered Mail. The tenants stated at first that they did not serve the landlord with the submitted documentary evidence. The tenants changed their testimony stating that it was serve via Canada Post Registered Mail but were unable to provide the date. The landlords disputed the tenants claim stating that no evidence was served by the tenants. The tenants were unable to provide any further

relevant details or proof of service for the submitted documentary evidence. Both parties confirmed the landlords served the tenants with 9 documentary evidence files in response to the tenants' application. I accept the undisputed affirmed evidence of both parties and find that both parties were sufficiently served with the tenants' notice of hearing package. I find on a balance of probabilities that the tenants failed to properly serve the landlords pursuant to sections 88 of the Act with the submitted documentary evidence. As such, the tenants' documentary evidence is excluded from consideration in this hearing. The landlords have disputed service and the tenants were unable provide any supporting evidence of service. I also find based upon the undisputed evidence of both parties that the tenants were properly served with the landlords' submitted 9 documentary evidence files as per section 88 of the Act.

Preliminary Issue(s)

At the outset, the tenants' request for more time to be allowed to make an application to dispute a 10 Day Notice was addressed. The tenants provided written details on the application which states in part,

We didn't realize it was at the post office as we were told it was done wrong and sent back. [reproduced as written]

The tenants clarified that they were not served with a 10 Day Notice; the tenants stated that they were served with a 10 Day Verbal Notice; the tenants stated that they were served with a 10 Day Notice on December 27, 2020; the tenants stated that they were not served with a 10 Day Notice dated December 27, 2020; and the tenants stated that they were served with a 3 Day Verbal Notice. Extensive discussions with the tenants took place resulting in the tenants stating that they have not been served with a 10 Day Notice. As such, I find that if the tenants were not served with a 10 Day Notice that the tenants' request to cancel the 10 Day Notice and the request for more time to dispute the notice is unwarranted. On this basis, the tenants' application is dismissed without leave to reapply.

The hearing proceeded on the landlord's application.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on August 15, 2018 on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated August 15, 2018. The monthly rent was \$1,500.00 payable on the 1st day of each month. A security deposit of \$725.00 and a pet damage deposit of \$100.00 were paid.

The landlord stated that the tenant was served with a 10 Day Notice for Unpaid Rent dated December 16, 2020 via Canada Post Registered Mail on December 16, 2020. The landlord has submitted a copy of a 10 Day Notice dated December 16, 2020 and a completed proof of service statement dated December 16, 2020 confirming service via Canada Post Registered Mail on December 16, 2020. The landlords also submitted a copy of a Canada Post receipt dated December 16, 2020 and a partial copy of the Customer Tracking Label. The landlords also submitted a printout of a Canada Post Tracking record history which shows that the package was received by Canada Post on December 16, 2020; an attempted service with a notice left on December 17, 2020; and a Final Notice of attempted service on December 22, 2020. The landlords stated that the package was returned by Canada Post as "unclaimed" by the tenants.

The landlords confirmed during that hearing that the 10 Day Notice dated December 16, 2020 provides for an effective end of tenancy date of December 31, 2020 and that the tenants failed to pay rent of \$1,182.00 that was due on November 15, 2020. During the hearing that landlords stated that this notice was incorrect as the correct due date should have been December 15, 2020. The landlords stated that they did not attempt to correct the 10 Day notice dated December 16, 2020 and has since issued multiple 10 Day Notice(s) to the tenants.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

In this case, I accept the landlords' evidence that a 10 Day Notice dated December 16, 2020 was served to the tenants on December 16, 2020 via Canada Post Registered

Mail. Despite the tenants' arguments that no 10 Day Notice was served, I find that the landlords have provided sufficient evidence to satisfy me that the 10 Day Notice was served in compliance of the Act. The tenants are deemed served as per section 88 of the Act 5 days later on December 21, 2020 despite not collecting the 10 Day Notice.

However, I find that the 10 Day Notice dated December 16, 2020 is incorrect and flawed. The landlord provided direct testimony that the \$1,182.00 owed was for December 15, 2020 and not November 15, 2020 as stated. The landlords stated that this was a clerical error. The landlords stated that they did not know of this clerical error until just before the dispute resolution hearing date and have since issued and served the tenants multiple 10 Day Notice(s) for Unpaid Rent. I find that although not listed under section 52 of the Act, I find that this is a substantial issue on the reliability of the 10 Day Notice submitted by the landlord. On this basis, the 10 Day Notice dated December 16, 2020 is set aside and cancelled. The tenancy shall continue.

Conclusion

The landlords 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 *Residential Tenancy Act*.

Dated: April 12, 2021

Residential Tenancy Branch