



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPU, OPN, MNDCL-S, MNRL-SS, CNR, CNL, OLC, FFT, FFL

Introduction

This hearing was convened in response to cross applications.

The Landlords filed an Application for Dispute Resolution, in which the Landlords applied for an Order of Possession for Unpaid Utilities, an Order of Possession because the Tenant gave notice to end the tenancy, a monetary Order for unpaid rent or utilities, a monetary Order for money owed or compensation for damage or loss, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Tenants first filed an Application for Dispute Resolution in which the Tenants applied to cancel a Two Month Notice to End Tenancy for Landlord's Use and for an Order requiring the Landlords to comply with the *Residential Tenancy Act (Act)*

The Tenants filed a second Application for Dispute Resolution in which the Tenants applied to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities and for an Order requiring the Landlords to comply with the *Residential Tenancy Act (Act)*.

Issue(s) to be Decided

Should the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities be set aside?
Should the Two Month Notice to End Tenancy for Landlord's Use be set aside?
Are the Landlords entitled to an Order of Possession?

Are the Tenants obligated to pay for hydro and, if so, in what manner?
Are the Landlords entitled to a monetary Order for unpaid rent or unpaid utilities?
Are the Landlords entitled to retain all of part of the security deposit?

Background and Evidence

At the hearing the female Tenant stated that the rental unit has been vacated and, as such, she wishes to withdraw the Application for Dispute Resolution in which the Tenants applied to cancel a Two Month Notice to End Tenancy for Landlord's Use.

The female Landlord stated that on May 27, 2021 the Dispute Resolution Package was sent to the Tenants, via email. The female Tenant stated that she did not receive the Landlord's Dispute Resolution Package. The female Landlord was asked on several occasions if she had submitted proof that the aforementioned documents were served to the Tenant by email. The female Landlord was unable to identify documentary evidence that would corroborate her testimony that the Dispute Resolution Package was served by email.

The female Tenant stated that the Tenant's Dispute Resolution Package, in which they applied to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, was sent to the Landlords, via email. The female Tenant stated that she does not recall when this Dispute Resolution Package was sent to the Landlord and she does not have any evidence to establish it was sent by email. The female Landlord stated that the Landlords did not receive this Application for Dispute Resolution.

Analysis

I find that the Tenants have withdrawn the Application for Dispute Resolution, in which they applied to cancel a Two Month Notice to End Tenancy for Landlord's Use.

The purpose of serving a Dispute Resolution Package is to notify the other party that a dispute resolution proceeding has been initiated and to give the other party the opportunity to respond to the claims being made. When an Application for Dispute Resolution is filed, the Applicant bears the burden of proving that the Respondent was served with the Dispute Resolution Package in accordance with section 89 of the *Residential Tenancy Act (Act)*.

I find that the Landlords have submitted insufficient evidence to establish that their Application for Dispute Resolution was served to the Tenants via email. In reaching this conclusion I was heavily influenced by the absence of documentary evidence that corroborates the female Landlord's testimony that it was served by email or that refutes the female Tenant's testimony that it was not received. As the Landlords have failed to establish that their Application for Dispute Resolution was served to the Tenants, the Landlords' Application for Dispute Resolution is dismissed, with leave to reapply.

The Landlords retain the right to file another Application for Dispute Resolution for any of the issues identified in their Application for Dispute Resolution.

I find that the Tenants have submitted insufficient evidence to establish that their Application for Dispute Resolution was served to the Landlords via email. In reaching this conclusion I was heavily influenced by the absence of documentary evidence that corroborates the female Tenant's testimony that it was served by email or that refutes the female Landlord's testimony that it was not received. As the Tenants have failed to establish that their second Application for Dispute Resolution was served to the Landlords, the second Application for Dispute Resolution is dismissed, with leave to reapply.

The Tenants retain the right to file another Application for Dispute Resolution for any of the issues identified in their second Application for Dispute Resolution.

Conclusion

The Tenants' Application for Dispute Resolution relating to an application to cancel a Two Month Notice to End Tenancy for Landlord's Use was withdrawn by the female Tenant at the hearing.

The Landlords' Application for Dispute Resolution is dismissed, with leave to reapply.

The Tenants' Application for Dispute Resolution relating to an application to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities is dismissed, with 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 16, 2021

Residential Tenancy Branch