



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR
 OPR-DR, MNR-DR, FFL

Introduction

This hearing was scheduled to convene at 11:00 a.m. on June 10, 2022 concerning applications made by one of the tenants as against one of the landlords, and by 2 landlords as against 2 tenants.

The tenant has applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities.

The landlords have applied by way of the Direct Request process for an Order of Possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenants for the cost of the application, which was referred to this participatory hearing.

Both landlords named in the landlords' application attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes and no one for the tenants joined the call.

One of the landlords testified that the tenants were individually served with the Notice of Dispute Resolution Proceeding and all required documents and evidence by registered mail on March 25, 2022. The landlords have provided 2 Registered Domestic Customer Receipts addressed to each of the named tenants, date stamped March 25, 2022 by Canada Post. I am satisfied that both tenants have been served in accordance with the *Residential Tenancy Act*.

During the course of the hearing, the landlords advised that the tenants are not in arrears of rent currently, and the landlords withdraw the application for a monetary order

for unpaid rent or utilities. The landlords also withdraw the application for recovery of the filing fee from the tenants.

One of the landlords testified that the tenants have not served the landlords with a Notice of Dispute Resolution Proceeding or any documents. The *Act* requires a party to serve the documents within 3 days of receiving the Notice of Dispute Resolution Proceeding from the Residential Tenancy Branch, and must be prepared to prove such service. The tenants have not provided any evidence. Since the tenants have not joined the hearing, and have not proven service upon the landlords, I dismiss the tenant's application without leave to reapply.

The *Residential Tenancy Act* states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. Further, case law specifies that any notice to end a tenancy given by a landlord must be given in good faith.

Issue(s) to be Decided

The issue remaining to be decided is: have the landlords established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The first landlord testified that this fixed-term tenancy began on October 28, 2017 and reverted to a month-to-month tenancy after October 28, 2018, and believes that the tenants still reside in the rental unit. Rent in the amount of \$600.00 was payable on the 28th day of each month, which has been increased with the consent of the tenants to \$900.00 per month over time. No security deposit or pet damage deposit were collected from the tenants. The rental unit is a single family dwelling, and a copy of the tenancy agreement has been provided for this hearing.

The second landlord testified that on March 1, 2022 the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by personally handing it to one of the tenants (CG). A copy of the Notice has been provided for this hearing and it is dated March 1, 2022 and contains an effective date of vacancy of March 11, 2022 for unpaid rent in the amount of \$1,300.00 that was due on March 11, 2022, however the landlord put that date on the Notice because that was 10 days after service. The Notice

also states: "\$400.00 by Feb 1/22" and "\$900.00 by Mar/22. The tenants actually owed \$1,300.00 for February and March, 2022 rent.

The tenants made various payments but were not caught up on the arrears until March 23, 2022. The tenants have not served the landlords with an Application disputing the Notice and the landlords seek an Order of Possession.

Analysis

As mentioned above, where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. I have reviewed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) and I find that it is in the approved form and contains information required by the *Residential Tenancy Act*.

I also accept the undisputed testimony of the landlord that the tenants were served with the Notice on March 1, 2022. Once served, the tenant has 5 days to pay the rent in full, in which case the Notice is of no effect. The landlord testified that the tenants did not catch up on arrears of rent until March 23, 2022, which is more than 5 days after the Notice was served.

Having dismissed the tenant's application, and having found that the Notice is in the approved form, and considering that the tenants did not pay the rent in full within 5 days of receipt of the Notice, I find that the landlords are entitled to an Order of Possession. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenants.

The balance of the landlords' application is dismissed without leave to reapply, as withdrawn by the landlords.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed without leave to reapply.

I hereby grant an Order of Possession in favour of the landlords effective on 2 days notice to the tenants.

The balance of the landlords' application is hereby dismissed without leave to reapply.

This order is final and binding and may be enforced.

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: June 10, 2022

Residential Tenancy Branch