



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, FFL

Introduction

This hearing was convened in response to the Landlords' Application for Dispute Resolution, in which the Landlords applied for an Order of Possession for Unpaid Rent or Utilities and to recover the fee for filing this Application for Dispute Resolution.

The Landlord with the initials "ZW" stated that on May 09, 2022 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch in May of 2022 was sent to each Tenant at the rental unit, via registered mail. The Landlord submitted Canada Post documents that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however neither Tenant appeared at the hearing. As the documents were properly served to the Tenants, the evidence was accepted as evidence for these proceedings and the hearing proceed in the absence of the Tenant.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Are the Landlords entitled to an Order of Possession?

Background and Evidence

The Landlord with the initials “ZW” stated that this tenancy began on April 01, 2022; the Tenants agreed to pay rent of \$3,000.00 by the first day of each month; and the Tenants have not paid the rent that was due by the first day of May of 2022 or the first day of April of 2022.

The Landlord with the initials “ZW” initially stated that:

- on April 17, 2022 the female Tenant was personally served with a Proof of Service of Ten Day Notice to End Tenancy and Written Demand to Pay Utilities;
- when the Landlord served the Proof of Service of Ten Day Notice to End Tenancy and Written Demand to Pay Utilities, the Landlord believed that they were serving a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities;
- the Residential Tenancy Branch contacted the Landlords and advised that the Application for Dispute Resolution was missing a copy of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities;
- on May 09, 2022 the Landlord personally served the Tenants with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated May 09, 2022, which they submitted to the Residential Tenancy Branch.

After a significant amount of conversation between “ZW” and the other Landlords, “ZW” stated that;

- on April 17, 2022 the female Tenant was personally served with a Proof of Service of Ten Day Notice to End Tenancy and Written Demand to Pay Utilities and an “old version” of Ten Day Notice to End Tenancy for Unpaid Rent or Utilities; and
- the older version of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities that was served on April 17, 2022 was not submitted in evidence because the Residential Tenancy Branch did not ask for it.

Analysis

On the basis of the undisputed evidence, I find that the Tenants entered into a tenancy agreement with the Landlords that required the Tenants to pay monthly rent of \$3,000.00 by the first day of each month. I further find that the Tenants have not paid the rent that was due on April 01, 2022 or May 01, 2022.

Section 46(1) of the *Act* entitles landlords to end a tenancy within ten days if rent is not paid when it is due by providing proper written notice. On the basis of the undisputed evidence I find that the Landlords had the right to serve the Tenants with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, as rent was not paid for April or May of 2022.

On the basis of the undisputed evidence, I find that the Landlords personally served a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities to the female Tenant on May 09, 2022.

The Landlords filed this Application for Dispute Resolution on April 26, 2022. As the Application for Dispute Resolution was filed before the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was served on May 09, 2022, I find that the Application for Dispute Resolution was filed prematurely. A landlord cannot apply to enforce a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities prior to serving the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities to the tenant. I therefore dismiss the application for an Order of Possession on the basis of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 09, 2022.

I find that the Landlords have submitted insufficient evidence to establish that they served the Tenants with a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities on April 17, 2022. Although “ZW” eventually testified that one was served, he initially stated that only a Proof of Service of Ten Day Notice to End Tenancy and Written Demand to Pay Utilities was served on April 17, 2022, which the Landlords mistakenly believed was a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities. In the absence of a copy of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities that was allegedly served on April 17, 2022 and in light of the contradictory testimony, I am simply not satisfied that a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was served prior to May 09, 2022.

As there is insufficient evidence to establish that a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities was served to the Tenants prior to the Application for Dispute Resolution being filed on April 26, 2022, I am unable to grant the Landlords an Order of Possession on the basis of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities that was allegedly served on April 17, 2022.

I find that the Landlords have failed to establish the merit of this Application for Dispute Resolution and I dismiss their application to recover the cost of filing this Application for Dispute Resolution.

Conclusion

The Application for Dispute Resolution is dismissed.

The Landlords retain the right to file another Application for Dispute Resolution seeking a monetary Order on the basis of the Ten Day Notice to End Tenancy for Unpaid Rent or Utilities that is dated May 09, 2022.

The Landlords also have the right to serve the Tenants with a new Ten Day Notice to End Tenancy for Unpaid Rent or Utilities and to apply for an Order of Possession on the basis of that Notice.

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: July 18, 2022

Residential Tenancy Branch