



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR**

Introduction

This hearing dealt with an application by the Landlord pursuant to the Residential Tenancy Act ("the Act") for orders as follows:

- an Order of Possession pursuant to section 55

The Applicant, P.B. attended the hearing along with D.M., the property manager. The tenants did not appear.

The parties in attendance confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11. They were solemnly affirmed.

The Applicant confirmed that the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) by registered mail on February 14, 2022. Pursuant to section 88 and 90 of the *Act* the tenants are deemed to have been served on February 19, 2022, five days after the posting of the 10 Day Notice.

The Applicant provided no information related to the service of the Notice of Dispute Resolution ("Application for Dispute") at the hearing or in their evidence, accordingly, no determination related to service of the Application for Dispute is made. Section 89 of the *Act* requires that a party serve the respondent with their Application for Dispute, however, for the reasons stated below, I find an analysis related to service of the Application for Dispute is moot.

Issue(s) to be Decided

1. Is the 10 Day Notice to End Tenancy for Unpaid Rent valid and enforceable against the tenant? If so, is the Landlord entitled to an Order of Possession?

Background and Evidence

A copy of the tenancy agreement provided shows that a tenancy commenced in May, 2020 on a month to month basis. There are four tenants listed on the agreement. Tenant J.P. paid \$375.00 per month, tenant Y.P. paid \$325.00 per month, tenant M.B. paid \$325.00 per month, and tenant R.B. paid \$420.00 per month. No security or pet deposits were taken. All the tenants are currently living in the residence.

The Applicant advised that his mother D.B., was the landlord of the subject property. She died, and in April 2021 he stated that he became the executor of her estate. The subject property forms part of the estate. The Applicant stated that the tenants have not paid rent since November 2020.

The Applicant seeks an Order of Possession based on four individual 10 Day Notices issued to the four different tenants. These notices were issued on February 11, 2022. Only the first page of these notices was provided in evidence by the Applicant.

Analysis

The Applicant bears the onus of proof in the application. First, I must be satisfied that a landlord-tenant relationship exists between the Applicant P.B., and the four tenants. Section 1 of the Act defines "landlord" as including:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

The Applicant is not listed as a landlord on the tenancy agreement. He also does not claim to own the residence but instead stated that he is the executor of the landlord D.B.'s estate. If I am satisfied that the Applicant is indeed the executor of the estate of the owner, D.B., then he would be considered a landlord under section 1 of the Act.

The RTB Policy Guideline number 43 states:

Where a party to an Application for Dispute Resolution is deceased, the personal representative of the deceased's estate must be named.... The personal representative may be the person named as executor in the deceased's will, or the person who has been approved by the court to administer the estate by way of an estate grant.

An executor is entitled to file an Application for Dispute Resolution. The Applicant stated that he is the executor of the landlord, D.B.'s estate, however I am not satisfied on a balance of probabilities that this is the case. The Applicant provided no evidence in support of his claim that he is the executor. The Applicant has provided no supporting documentation showing that he is entitled to deal with the property in any manner. He has therefore not satisfied his onus to establish that a landlord-tenant relationship exists between himself and the tenants named in the application. I am unable to grant an order of possession to a person who has not established that they are entitled to possession of the residence.

The 10 Day Notices dated February 11, 2022, are not valid and enforceable against the tenants. This tenancy shall continue until it is ended in accordance with the *Act*.

Conclusion

The 10 Day Notices to End Tenancy for Unpaid Rent dated February 11, 2022, are cancelled and are of no force or effect.

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: August 30, 2022

Residential Tenancy Branch