



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RUSKIN ENTERPRISES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction, Preliminary and Procedural Matters-

This hearing convened as a result of the landlord's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for:

- an order of possession of the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued by the landlord;
- a monetary order for unpaid rent; and
- to recover the cost of the filing fee.

This dispute began as an application via the ex-parte Direct Request process and was adjourned to a participatory hearing based on the Interim Decision by an adjudicator with the Residential Tenancy Branch (RTB), dated October 27, 2022, which should be read in conjunction with this decision.

At the participatory hearing, the owners of the limited company/landlord (landlord) attended the teleconference hearing. The tenant did not attend the hearing. For this reason, service of the Application for Dispute Resolution, evidence, and Notice of Hearing (application package) was considered.

The landlord testified that the tenant was served the Notice of Reconvened Hearing, the interim decision, and all other required documents by registered mail on October 28, 2022. The landlord provided the tracking number as proof of service, which is located on the style of cause page of this decision.

My findings on service of the application package are addressed within this Decision.

The landlords were provided the opportunity to present their evidence orally and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules).

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the landlord entitled to an order of possession of the rental unit due to unpaid monthly rent, to monetary compensation for unpaid rent, and to recover the cost of the filing fee?

Background and Evidence

The landlords said they purchased the residential property from the original landlord in April 2022. The written tenancy agreement was filed in evidence, showing monthly rent of \$1250 due on the 1st day of the month. The tenancy agreement also listed another tenant in addition to this tenant. The tenant/respondent's first name was spelled differently in multiple documents submitted by the landlord.

The landlord submitted that on August 3, 2022, the tenant was served with the Notice by a third party who handed the documents to a person answering the door. The effective vacancy date listed on the Notice was August 3, 2022, the same day the Notice was dated and delivered. Filed in evidence was a copy of the Notice and proof of delivery of the Notice.

Under the name of the landlord/agent issuing the Notice, there was a first name; however, the surname of the agent was scratched through so that it appeared that the full name was incomplete.

The amount of unpaid rent listed as of August 1, 2022, was \$5,000, broken down as \$1250 owed for May, June, July and August. In the hearing, the landlords testified that the tenants paid \$625 and \$575 in June and \$50, \$300, and \$300 in July 2022.

The landlords filed a direct request worksheet showing payments of \$400 on June 1, \$400 and \$400 on June 29, and \$350 and \$300 on July 26. The worksheet also listed

that as of September 1, 2022, the outstanding monthly rent balance of \$3150 was owed.

The landlords also filed evidence of an email of August 4, 2022, from the third party serving the Notice. This email informed the landlords that the tenants were told that from now onwards, the monthly rent would be plus utilities.

The landlords said they were not sure if the tenant continued to reside in the rental unit.

Analysis

Section 59(3) states that an applicant for dispute resolution must give a copy of the application to the other party within 3 days.

Section 89(1) of the Act requires that the landlord's application for dispute resolution, which includes the notice of hearing, must be given by personally handing the documents to the tenant, by registered mail to the tenant's address where they reside or to their forwarding address, or by other means of service provided for in the regulations.

Here, a search of the Canada Post website for the tracking history of the registered mail sent by the landlord to the tenant shows the registered mail was not delivered to the tenant due to a "customer addressing error". The registered mail was returned to sender.

For this reason, I find the landlord has submitted insufficient evidence to show that they properly served the tenant notice of the hearing and their application by using the correct address of the tenant for the registered mail.

I therefore dismiss the landlord's application, with leave to reapply.

Leave to reapply does not extend any applicable limitation periods.

I note that I would still make the same decision to dismiss the landlord's application with leave to reapply due to their inconsistent evidence. The Notice of August 3, 2022, indicates that the amount of unpaid rent included the full rent for June and July, when their evidence shows rent payments for those two months. Plus, the landlords' testimony of the rent payments was inconsistent with their direct request worksheet.

In addition, the Notice did not contain the full name of the landlord/agent issuing the Notice. And finally, it was unclear if the amount of unpaid rent on the Notice included any amounts for utilities. The landlords are informed that they may not make the decision to begin charging for utilities unless allowed by the written tenancy agreement.

As I did not proceed with the landlord's application, I decline to award them recovery of the filing fee.

The landlords are reminded to ensure that all inconsistencies in evidence are corrected prior to filing for dispute resolution in the future.

Conclusion

The landlord's application was dismissed with leave to reapply, due to service issues as described above.

I make no findings on the merits of the matter. Liberty to reapply is not an extension of any applicable limitation period.

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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: November 29, 2022

Residential Tenancy Branch