



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

Introduction

This hearing dealt with the Landlord's application under the *Residential Tenancy Act* (the "Act") for an Order of Possession under a 10 day notice to end tenancy for unpaid rent or utilities (the "10 Day Notice") pursuant to section 55.

The Landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The Tenant did not attend this hearing. I left the teleconference hearing connection open until 11:27 am in order to enable the Tenant to call into the hearing scheduled to start at 11:00 am. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that the Landlord and I were the only ones who had called into the hearing. I informed the Landlord that the Residential Tenancy Branch Rules of Procedure prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

The Landlord confirmed that he had sent the notice of dispute resolution proceeding package and his documentary evidence (collectively, the "NDRP Package") to the Tenant via Xpresspost on December 13, 2022, with signature option. The Landlord submitted a tracking number (referenced on the cover page of this decision). Tracking records indicate that the package was not picked up by the Tenant. The Landlord testified that he told the Tenant about the NDRP package and was corresponding with the Tenant via text.

Residential Tenancy Policy Guideline 12. Service Provisions states:

Where a document is served by Registered Mail or Express Post, with signature option, the refusal of the party to accept or pick up the item, does not override the deeming provision. Where the Registered Mail or Express Post, with signature option, is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

I find the Landlord served the Tenant with the NDRP Package in accordance with sections 88(c) and 89(2)(b) of the Act. Based on the Landlord's testimony and pursuant to section 90(a) of the Act, I find the Tenant is deemed to have received the NDRP Package on the fifth day after mailing, or December 18, 2022.

Having found the Tenant to have been deemed served with notice of this hearing, I directed that this hearing continue in the Tenant's absence.

Issue to be Decided

Is the Landlord entitled to an Order of Possession under the 10 Day Notice?

Background and Evidence

This tenancy commenced on September 1, 2013 and is month-to-month. Rent is \$545.00 due on the first day of each month. The Tenant did not pay a security or pet damage deposit. A copy of the tenancy agreement has been submitted into evidence.

The Landlord also submitted a copy of the 10 Day Notice into evidence. The 10 Day Notice is signed by the Landlord and states that the Tenant failed to pay rent of \$2,180.00 due on November 1, 2022. However, the 10 Day Notice is not dated and does not state an effective date.

The Landlord submitted a signed and witnessed proof of service which indicates that a copy of the 10 Day Notice was attached to the Tenant's door on November 6, 2022. The Landlord explained that the Tenant has not paid any rent since a partial payment made in July 2022. The Landlord confirmed the Tenant is still residing in the rental unit.

Analysis

Section 26(1) of the Act states that a tenant must pay rent when due, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

If a tenant does not pay rent when due, section 46 of the Act permits a landlord to take steps to end a tenancy by issuing a notice to end tenancy for unpaid rent.

Section 46(2) of the Act requires a 10 day notice to end tenancy for unpaid rent or utilities to comply with section 52 of the Act, which states:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45(1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

(emphasis added)

In this case, I have reviewed the 10 Day Notice and find that it does not specify the date on which it was issued by the Landlord, nor does it provide an effective date on which the tenancy would be ended. As such, I am unable to conclude that the 10 Day Notice is an effective notice to end tenancy under section 52 of the Act.

I note section 68(1) of the Act states:

Director's orders: notice to end tenancy

68(1) If a notice to end a tenancy does not comply with section 52 [*form and content of notice to end tenancy*], the director may amend the notice if satisfied that

- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
- (b) in the circumstances, it is reasonable to amend the notice.

I find I am unable to conclude that the Tenant knew or should have known what the effective date of the 10 Day Notice would have been. Section 46(1) of the Act only requires that the effective date of a 10 day notice to end tenancy be not earlier than 10 days after the date the tenant receives the notice. I note that if the 10 Day Notice had an effective date, the Tenant might have been able to deduce the issuance date. However, since the 10 Day Notice is missing both dates, I am unable to conclude that under section 68(1)(a) of the Act, the Tenant knew or should have known the information that was omitted. Accordingly, I set aside the 10 Day Notice as it does not comply with the requirements of the Act. I find the Landlord is not entitled to an Order of Possession on the basis of the 10 Day Notice under section 55(2)(b) of the Act.

Conclusion

The Landlord's application is dismissed with leave to re-apply. The Landlord is at liberty to issue another 10 day notice to end tenancy for unpaid rent which complies with the requirements of the Act.

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: January 10, 2023

Residential Tenancy Branch