Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPR, MNRL, FFL

Introduction

The Landlords applied for dispute resolution ("Application") and seek an Order of Possession on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") under section 55(2)(b) of the *Residential Tenancy Act* (the "Act"). They are also seeking to recover unpaid rent and the cost of the filing fee under section 72 of the Act.

All three Landlords appeared at the hearing, however only B.G. provided testimony. When referring to testimony from the Landlords in this Decision, the singular shall be used and it will refer to B.G only. The Tenant J.M. appeared at the hearing for the Tenants. All parties who provided testimony affirmed to tell the truth during proceedings and were given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

The Landlord testified they served the Notice of Dispute Resolution Package ("Materials") on the Tenants by registered mail on January 12, 2023. The Tenant stated they are unsure if the Materials were received as the co-Tenant, who would have been able to confirm receipt of the Materials, was not currently at the rental address and were not contactable at this time.

The Canada Post tracking numbers for the packages for each Tenant were provided by the Landlords as evidence. The tracking numbers are provided on the first page of this Decision. A search of the tracking numbers on the Canada Post website indicates that the Materials for both Tenants were sent on January 12, 2023 and were delivered on January 19, 2023.

In light of the above evidence from the Landlord and the fact that the Tenant was aware of the hearing, as evidenced by their attendance, I find that pursuant to section 89 of the Act, the Landlords' Materials were sufficiently served to the Tenants.

Preliminary Issue – Request for Adjournment

The Tenant requested the hearing be adjourned to a later date as the other Tenant was not able to attend due to medical issues. They also stated they needed more time to prepare evidence. The Tenant referred to requiring evidence of alleged issues with the water supply and harassment from the Landlords. The Landlords opposed the request for an adjournment.

Rule 7.8 of the *Rules of Procedure* allows an Arbitrator to adjourn the hearing to another time and Rule 7.9 sets out the factors that must be considered when a request to adjourn is made:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

I find that the Tenants were allowed sufficient time to prepare a response to the Landlords' Application as they received the Materials at least five weeks before the hearing. Though one of the Tenants could not attend, the other Tenant was in attendance, and they were capable of providing testimony regarding the matter. The additional evidence the Tenant stated they needed more time to prepare appeared to relate to matters outside of those to be discussed at the hearing. Accordingly, the request for an adjournment was denied.

Issues to be Decided

1. Are the Landlords entitled to an Order of Possession?
2. Are the Landlords entitled to a Monetary Order for unpaid rent?
3. Are the Landlords entitled to recover the filing fee for the Application from the Tenants?

Background and Evidence

Both parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The Landlord testified that the Tenants took occupancy of the rental unit on October 15, 2022. The Tenants were given a “grace period” for rent for the remainder of that month and were supposed to transfer the utilities into their own name and pay the rent and security deposit by November 1, 2022. A copy of the Tenancy Agreement was submitted as evidence by the Landlords which confirms monthly rent of $2,000.00 was payable on the first day of the month with a security deposit of $1,000.00.

The Landlord stated that the rent and security deposit were not paid on November 1, 2022 and when they contacted the Tenants, they were informed the Tenants were waiting for a cheque to arrive. By December 1, 2022 still no rent or security deposit payments had been received and so the Landlords decided to issue the Notice.

The Landlord testified the Notice was sent by email to one of the Tenants on December 1, 2022. A copy of the Notice was provided by the Landlords as evidence. The Landlord testified they later realized that there was not an agreement in place between the parties to serve documents via email and so the service of the Notice was “not valid”. The Landlords did not make any further attempts to serve the Notice in a different manner.

In their succinct testimony, the Tenant confirmed that email was not an accepted method of service and so the Notice was “null and void”. The Tenant did not accept service of the Notice.

Analysis

Section 46(1) of the Act allows a landlord to end a tenancy if the tenant does not pay rent on time by issuing a 10 Day Notice to End Tenancy for Unpaid Rent. The Notice to End Tenancy should be served in a manner that complies with section 88 of the Act which confirms how to give or serve documents generally.

Email as a method as service is not mentioned explicitly in this section, though at section 88(j) it is confirmed that documents may be served “by any other means of

service provided for in the regulations." At section 43(1) in the *Residential Tenancy Regulation*, B.C. Reg. 477/2003, it is stated that documents may be served "by emailing a copy to an email address provided as an address for service by the person".

The onus is on the serving party to prove, on the balance of probabilities, that a document was served in accordance with the Act. In their testimony, the Landlord confirmed that email was not an agreed upon method of service between the parties. The Tenant also testified that email was not an agreed upon method of service. Therefore, based on the testimony from both parties, I find that email is not an agreed upon method of service between the parties.

Section 71(2)(c) of the Act allows for an Arbitrator to exercise discretion and order that a document not served in accordance with section 88 or 89 is nonetheless sufficiently given or served for the purposes of the Act. The Landlords submitted no evidence regarding which email address was used, if an acknowledgment of receipt of the Notice was ever received from the Tenants, if regular correspondence between the parties had been conducted using that email address, or any other evidence regarding previous use of the email address. In light of this, I do not find it appropriate to order that the Notice was served pursuant to section 71(2)(c) of the Act.

I find that the Notice was not served in accordance with the Act. Therefore, I dismiss the Landlords' Application.

As the Application was not successful, the Landlords must bear the cost of the filing fee.

Conclusion

The Application is dismissed without leave to reapply.

The Notice is of no force or effect and the tenancy continues.

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: March 03, 2023

Residential Tenancy Branch