



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes SS O MNSD MNR MNDC MND FF
 OLC AS O FF

Introduction

This hearing dealt with Applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking an Order to allow substitute service of documents, for other reasons, to obtain a Monetary Order to retain the security deposit, for unpaid rent, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for damage to the unit, site or property, and to recover the filing fee from the Tenant for this application.

The Tenant filed seeking an Order to have the Landlord comply with the Act, regulation, or tenancy agreement, for an Order to allow the Tenant to assign or sublet the rental unit, for other reasons, and to recover the cost of the filing fee from the Landlord for this application.

Issue(s) to be Decided

1. Has the Tenant been served with the Landlord's Application for Dispute Resolution in accordance with section 89 of the *Residential Tenancy Act*?
2. Has this tenancy ended prior to today's hearing?
3. If so, how did this tenancy end?

Background and Evidence

The Tenant affirmed that she was not served with the Landlord's Application for Dispute Resolution or the Landlord's documents. She confirmed she was at work February 8, 2012 between 6:00 p.m. and 2:00 a.m. and that during the supper rush she was told that someone was at the door to see her, at which time her manager told her she could not meet with them as they were too busy.

I asked the Landlord's Agent, who is a daughter to the Landlord, to explain why her sister, the other Agent who resides in the rental unit, signed a document which states she witnessed the Tenant being served with the Landlord's hearing documents. The Agent first responded saying the Tenant was served and then stated they suspected she would say she did not get served so they attempted to serve her the next day at the rental unit but the Tenant refused the documents. The Agent later confirmed the Tenant was not served at her place of employment.

The Tenant confirmed she attended the rental unit the next day in the presence of a police officer so she could pick up her possessions and the Landlord's daughter attempted to give her only one document which was a list of damages which she did not accept because she did not damage anything.

The Landlord's Agent confirmed she resides in another Province and that her sister, who resides in the rental unit and who has firsthand knowledge of what transpired, was not in attendance at the hearing.

Upon review of the Tenant's application for Dispute Resolution the Tenant confirmed that the items claimed are no longer relevant to her situation because on February 1, 2012 the Landlord changed her key fob access and locked her out of the unit. She advised that when she returned home on February 1, 2012 her key fob no longer worked so she called her co-tenant who told her the Landlord had cancelled everyone's key fob and that she was instructed not to let the Tenant into the unit. The Tenant attempted to call both of the Landlord's agents and neither one of them would answer her calls. This is why she attended the unit with an officer to get her possessions.

I asked the Landlord's Agent if the key fobs access was changed to which she answered "no". I then asked why the Tenant could not get into the rental unit with her key fob and the Agent began to tell me that her sister had lost her key fob so all fobs had to be cancelled.

Both parties were advised they were at liberty to make another application for Dispute Resolution if they wished to proceed on other matters, to include this decision as evidence, and to ensure they seek guidance from the *Residential Tenancy Branch* on how to properly serve hearing documents and evidence.

Analysis

Landlord's Application

The purpose of service documents under the *Residential Tenancy Act* is to notify the person being served of their breach and notification of their rights under the *Act* in response. The Landlord is seeking monetary compensation due to an alleged breach; therefore the Landlord has the burden of proving that the Tenant was served with all required documents in accordance with section 89 of the *Residential Tenancy Act*.

Residential Tenancy Branch Rules of Procedure 3.3 stipulate that the applicant must prove to the Dispute Resolution Officer that each respondent was served as required under the *Act*. If served in person, the person who served the documents must either attend the dispute resolution proceeding as a witness, either in-person or by conference call.

As per the Landlord's Agent's testimony it was her sister and another agent who allegedly served the Tenant the hearing documents, as supported by a signed statement provided in her evidence. The Agent later contradicted this statement by first saying they knew the Tenant would say she did not get served, and then later confirmed the Tenant was not served at her place of employment, so they attempted to serve her the next day but she refused. Based on the aforementioned, I find the applicant has failed to prove the Tenant was served the Landlord's hearing documents and evidence in accordance with the *Act*. Accordingly I dismiss the Landlord's claim, with leave to reapply.

Tenant's Application

When determining if the Tenant's application is still applicable, I favored the evidence of the Tenant, who stated she was at work February 8, 2012 and that although someone attended her work to see her she was not allowed to meet with them and therefore was not served with the Landlord's application for dispute resolution or her evidence; over the Landlord's evidence who first stated that her sister, the agent who resides in the rental unit, witnessed the Tenant being served and then changed her testimony to say they knew the Tenant would say she was not served so they attempted to serve her the

next day at the rental unit but the Tenant refused to take the documents. I favored the evidence of the Tenant over the Landlord's Agent, in part, because the Tenant's evidence was forthright and credible. The Tenant readily acknowledged that she refused to accept service of the document the next day but that it was a damage report and not hearing documents. In my view the Tenant's willingness to admit fault when she could easily have stated she accepted the document lends credibility to all of her evidence.

In *Bray Holdings Ltd. V. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p. 174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The Test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness is such a case must be its harmony with the preponderance of the probabilities of which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

I find the Landlord's Agent's explanation of why the key fobs were changed to be improbable. Given that the parties were in dispute and that the Landlord changed her testimony, first about the service and then again when she stated the key fobs were not changed. I find that the Landlord's Agent's explanation that her sister lost her keys to be improbable, not to mention does not provide an explanation as to why the other tenant was instructed not to let this Tenant into the unit. Rather, I find the Tenant's explanation that the Landlord locked her out to evict her immediately, to be plausible given the circumstances presented to me during the hearing.

For all the aforementioned reasons, I find this tenancy ended **February 1, 2012**, when the Landlord's Agent summarily evicted the Tenant by cancelling the Tenant's key fob access, in breach of section 31(1) of the Act which states as follows:

(1) A landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.

(1.1) A landlord must not change locks or other means of access to a rental unit unless

(a) the tenant agrees to the change, and

(b) the landlord provides the tenant with new keys or other means of access to the rental unit.

As per the aforementioned the Tenant's application is no longer applicable as this tenancy has ended.

Conclusion

I HEREBY DISMISS the Landlord's application, with leave to reapply.

The Tenant's application is hereby dismissed.

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: February 15, 2012.

Residential Tenancy Branch