



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF (Landlord's Application)
CNR, FF, O (Tenant's Application)

Introduction

This hearing was convened by way of conference call concerning an Application for Dispute Resolution (the "Application") made by the Landlord and by the Tenant.

The Landlord applied for an Order of Possession and a Monetary Order for: unpaid rent and utilities; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; to keep the Tenant's security deposit; and to recover the filing fee from the Tenant.

The Tenant applied to cancel the notice to end tenancy for unpaid rent or utilities, to recover the filing fee, and for 'Other' issues of which none were identified during the hearing.

The Landlord and Tenant appeared for the hearing and both parties provided affirmed testimony. Both parties also provided documentary evidence to the Residential Tenancy Branch prior to the hearing.

Preliminary Issues

The Landlord testified that she had served the Tenant with a copy of her Application and her written evidence by personal service and by registered mail. The Landlord made her Application on February 23, 2015. The Landlord explained that she then attended the Tenant's rental suite with a witness on February 24, 2015 where she placed the documents on the Tenant's kitchen countertop and informed her that they related to this hearing.

The Tenant disputed this and testified that she told the Landlord that she was not going to accept the documents in this manner. The Tenant explained that the Landlord then left the rental unit with her witness and took the documents with her failing to leave them

with her. The Tenant testified that she attempted several times to ask the Landlord for the paperwork. It was only when the Landlord informed the Tenant that they were waiting at the post office for her to collect them, did she collect the paperwork on March 9, 2015 as verified by the Canada Post tracking history for the documents.

The Landlord testified that she left a copy of the documents in the Tenant's rental unit when she visited it on February 24, 2015 with a witness. When the Landlord was asked about the witness, the Landlord explained that she had asked a person who was present in the Tenant's building to be a witness. However, the Landlord was unable to provide the witness for this hearing or a statement from the witness to verify that the documents were left with the Tenant on this date.

When the Landlord was asked about the service of the documents by registered mail, the Landlord testified that she sent the documents to the Tenant on **February 27, 2015** and that the Tenant had signed and received for them on March 9, 2015. The Landlord provided the Canada Post tracking number in oral testimony and the Canada Post website indicates that the documents were sent on **February 28, 2015**, five days after being issued to the Landlord by the Residential Tenancy Branch.

The Tenant testified that she had received the documents by March 9, 2015 but that this did not give her sufficient time to consider the extensive and confusing evidence that had been provided by the Landlord. The Tenant argued that the Landlord's Application should be dismissed as she had not served the paperwork within the time frame stipulated by the Act.

Section 59(3) of the Act requires an applicant making an Application to serve the respondent with a copy of it within three days of making it. The party making the Application bears the burden of proof regarding the service of it to the respondent. Therefore, in relation to the Landlord's claim that she served her Application to the Tenant personally on February 24, 2015, I find the Landlord has not provided sufficient evidence to prove this method of service to the Tenant; the Landlord was unable to provide any verification of this method of service through the use of witness evidence or testimony and therefore, I am unable to accept service was effected in this manner.

In relation to the Landlord's service of the documents by registered mail, I find that the Tenant did not receive these documents until nine days before the hearing and this did not allow sufficient time for the Tenant to consider the Landlord's Application and evidence. Therefore, I was not willing to proceed and hear the Landlord's Application. Furthermore, I found that as the Landlord had not served the Tenant within the three

day time limit stipulated by the Act, I dismissed the Landlord's Application with leave to re-apply.

The Landlord explained that she was still seeking to end the tenancy and wanted an Order of Possession for the rental suite. As a result, I continued to hear the evidence of both parties in relation to the notice to end tenancy which the Tenant had requested to cancel.

Both parties provided extensive oral testimony regarding the notice to end tenancy. However, during the conclusion of the hearing, the Tenant disclosed that she had already moved out of the rental suite because she had enough of this tenancy. The Landlord testified that she had no knowledge of this and was convinced that the Tenant was still occupying the rental suite.

As a result, I informed the Landlord that as the Tenant had testified that she had vacated the rental suite, I would grant her an Order of Possession pursuant to her oral request at the start of the tenancy. This order is effective two days after service on the Tenant and the Landlord is able to enforce the ending of the tenancy. The Tenant raised no issues or concerns with this resolution.

As a result, I dismissed the Tenant's Application to cancel the notice to end tenancy because she claims to have vacated the rental suite. Accordingly, I find the Tenant is not entitled to recover the filing fee from the Landlord because she already moved out of the rental suite prior to this hearing and no findings were made in relation to her Application to cancel the notice to end tenancy.

The Landlord asked about her monetary claim and she was informed that she is still at liberty to make an Application for her monetary losses and ensure that she meets the service requirements and deadlines as set out by the Act. No further issues were raised by the parties at the conclusion of the hearing.

Conclusion

The Landlord is granted an Order of Possession pursuant to Section 55(1) of the Act, which is effective **two days after service on the Tenant**. This order may then be filed and enforced in the Supreme Court as an order of that court if the Tenant fails to vacate the rental suite. Copies of this order are attached to the Landlord's copy of this decision.

The Landlord's monetary claim is dismissed **with** leave to re-apply because the Landlord was unable to prove service of her Application to the Tenant.

As the Tenant vacated the rental suite prior to this hearing, the Tenant's Application is dismissed **without** leave to re-apply.

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: March 18, 2015

Residential Tenancy Branch

