



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on April 15, 2015, seeking to obtain an Order to cancel a Notice to end tenancy issued for cause and to recover the cost of the filing fee from the Landlord for this application.

The hearing was conducted by teleconference and was attended by the Tenant who provided affirmed testimony.

Issue(s) to be Decided

- 1) Has the Tenant provided sufficient evidence to prove when and how the Landlord was served notice of this proceeding?
- 2) Has the Tenant submitted sufficient evidence to proceed with this application?

Background and Evidence

The Tenant testified that he had served the Landlord's girlfriend with copies of his application and evidence. When I asked when that service was conducted the Tenant stated that it was on the last possible day. Upon further clarification the Tenant advised that all of his papers were stolen from his rental unit and he did not have the exact date of service in front of him. He asserted that he called the Landlord and the Landlord's girlfriend answered at which time he told her he had some papers for the Landlord. He said the Landlord's girlfriend came to his door and picked up the papers.

During the hearing the Tenant called his mother and requested that she provide him with the date he served the Landlord. He noted that his mother had copies of his hearing documents at her house. He then advised that he served the Landlord on April 21, 2015 and then during the discussion he changed the service date to April 19, 2015. He then confirmed that he did not know the exact date but knew it was served on the last possible day to allow him more time.

The Tenant submitted that he gave copies of his evidence to the Landlord but he did not serve copies of the evidence to the Residential Tenancy Branch as he thought the Landlord would do that. He argued that he had been issued two eviction Notices one for unpaid rent and the other for cause. The Tenant stated that he could not recall the exact date that he received the 1 Month Notice for Cause only that he found it posted to his door.

Analysis

Section 89(1) of the Act stipulates that an application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

The applicant Tenant bears the burden of proof of service of the hearing documents as well as the burden to prove the merits of their application. In this case the Tenant was not able to provide testimony as to the exact date he served the Landlord's girlfriend with copies of his application and hearing documents. Furthermore, the Tenant was not able to provide testimony regarding when he received the 1 Month Notice or the reasons listed on the Notice. In addition, the Tenant confirmed that he had not submitted evidence to the Residential Tenancy Branch; therefore, there was no way for me to determine the validity of the 1 Month Notice.

To find in favour of an application, I must be satisfied that the rights of all parties have been upheld by ensuring the parties have been given proper notice to be able to defend their rights. Furthermore, I must be satisfied that the merits of the application have been proven in order to render a decision. Therefore, in the absence of accurate testimony regarding service of this application and hearing, I dismiss the Tenant's application, with leave to reapply.

Conclusion

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

This dismissal does not extend any time limits set forth in the *Residential Tenancy 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: June 01, 2015

Residential Tenancy Branch

