



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLLIERS MACAULAY NICOLLS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 40 minutes. The landlord's two agents, landlord MVDG ("landlord") and "landlord DM" attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord confirmed that she is the property manager for the landlord company named in this application and that she had authority to represent it as an agent at this hearing. Landlord DM confirmed that he also had authority to represent the landlord company as an agent at this hearing.

At the outset of the hearing, the landlord testified that she wished to remove the other four tenants named as respondents in this application, because they were only occupants in the rental unit and not tenants, as they did not sign the tenancy agreement. Accordingly, pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to remove the other four tenants-respondents from the style of cause for this proceeding.

The landlord testified that she was no longer seeking a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement. Accordingly, these portions of the landlord's application are withdrawn.

Preliminary Issue – Service of Landlord's Application

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package ("Application") on June 26, 2014, by way of registered mail. The landlord stated that the tenant called her after she received the Application, which the landlord says demonstrates that the tenant received the Application. The landlord did not provide a Canada Post receipt or tracking number to confirm this service with its Application. The landlord stated that she was away from her office at the time of the hearing and did not have access to the receipt. I advised the landlord that she could send me a copy of the receipt after the hearing, by way of facsimile.

Analysis – Service of Landlord's Application

Residential Tenancy Policy Guideline 12 outlines the methods to prove service of documents (emphasis added):

Where the respondent does not appear at a Dispute Resolution hearing, the applicant must be prepared to prove service under oath.

...

*Proof of service by registered mail should include the **original receipt given by the post office and should include the date of service, the address of service**, and that the address of service was the person's residence at the time of service...*

Failure to prove service may result in the matter being dismissed, or dismissed with leave to reapply...

After the hearing, the landlord provided a copy of four Canada Post registered mail tracking numbers. There is no original receipt showing that the registered mail packages were purchased at the post office on a certain date. The "customer receipts" provided by the landlord do not have the address of the tenant and only have handwritten first names of four people on them. The landlord also provided a printout of the tracking number delivery results, which was printed on the day of the hearing, indicating that the packages were mailed out on June 25, not June 26, as testified to by the landlord.

The tenant did not attend the hearing. I find that the landlord has failed to provide sufficient proof of service by way of registered mail. The landlord did not provide an

original registered mail receipt with the date of service and the address of service. The landlord provided an incorrect service date by way of testimony at the hearing, which does not match the date on the delivery result printout submitted by the landlord after the hearing.

Accordingly, the landlord's application for an order of possession for unpaid rent is dismissed with leave to reapply.

As the landlord was unsuccessful in this Application, it is not entitled to recover the \$50.00 filing fee from the tenant.

Conclusion

The landlord's application for a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement, is withdrawn.

The landlord's application for an order of possession for unpaid rent is dismissed with leave to reapply.

The landlord's application to recover the filing fee is dismissed without leave to reapply.

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: August 24, 2015

Residential Tenancy Branch

