



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF

Introduction

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

- an order of possession for cause pursuant to section 55;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing by conference call and provided affirmed evidence. The landlord stated that the tenant was served with the notice of hearing package by Canada Post Registered Mail on February 17, 2016 and has provided a copy of the Canada Post Customer Receipt Tracking Number as confirmation. The tenant has confirmed receipt of the notice of hearing package. As such, I find that the tenant has been properly served as per sections 88 and 89 of the Act.

The landlord stated that the tenant was served with the landlord's documentary evidence by posting it to the rental unit door with a witness. The tenant disputes this stating that no evidence has been received from the landlord. The landlord stated that she had a neighbor witness the service of the documentary evidence in this manner. The landlord's witness was unable to communicate effectively as English was a second language. After multiple attempts at communicating with the landlord's witness, I found that communication was not possible without a witness as the tenant's witness would not even respond to what her name was. The landlord confirmed that she knew that the neighbor was not proficient in English and would require an interpreter. I find without any supporting evidence that the landlord has failed to provide sufficient evidence to support her claim that the tenant was served with copies of the landlord's documentary evidence. The landlord's documentary evidence is excluded for the purposes of this hearing.

Issue(s) to be Decided

Are the landlords entitled to an order of possession issued for cause?

Are the landlords entitled to a monetary order for recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlords stated that the tenant was served with a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) dated January 28, 2016. The 1 Month Notice displays an effective end of tenancy date of February 28, 2016. The 1 Month Notice set out that it was being given as:

- the tenant has allowed an unreasonable number of occupants in the unit;
- the tenant or person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- the tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property;
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.
- the tenant has caused extraordinary damage to the unit.
- the tenant has assigned or sublet the rental unit/site without the landlord's written consent.

The landlord stated that the tenant was served with the 1 Month Notice dated January 28, 2016 on January 28, 2016 by posting it to the rental unit door with a witness. The tenant disputes that she did not receive the 1 Month Notice dated January 28, 2016 until the application for dispute was received. The tenant clarified that only the 1st page was received. The landlord stated that the 1 Month Notice dated January 28, 2016 was also witnessed as to being served by posting it to the rental unit door on January 28, 2016 with the same neighbor witness.

On a balance of probabilities, I am not satisfied that the tenant was served with the 1 Month Notice dated January 28, 2016 pursuant to section 88 of the Act. The landlord has failed to provide sufficient evidence of service.

The landlords' application is dismissed with 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: April 05, 2016

Residential Tenancy Branch