



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, MT

Introduction

This hearing was convened in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied for more time to apply to set aside a Notice to End Tenancy. Although the Tenants did not apply to set aside a Notice to End Tenancy for Cause, information filed with the Application for Dispute Resolution makes it clear they are seeking to set aside a One Month Notice to End Tenancy for Cause.

Issue(s) to be Decided

Should a Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Background and Evidence

The Tenant stated that:

- on May 27, 2016 he posted the Application for Dispute Resolution and the Notice of Hearing on the Respondent's door;
- approximately 1.5 weeks ago the Respondent told him he had not received the Application for Dispute Resolution or the Notice of Hearing; and
- on June 19, 2016 he sent digital images of these documents to the Respondent, via email.

The Agent for the Landlord stated that:

- the Respondent is also an agent for the Landlord;
- on June 18, 2016 the Respondent told her that he had been informed this hearing had been scheduled;
- the Respondent told her that he never received an Application for Dispute Resolution or a Notice of Hearing;
- the Respondent told her that the Tenant provided him with the hearing date and the access codes, via the telephone; and
- the Landlord has not yet received any documents relating to these proceedings.

Analysis

The purpose of serving the Application for Dispute Resolution and the Notice of Hearing to a landlord is to notify them that a dispute resolution proceeding has been initiated and to give them the opportunity to respond to the claims being made by the tenant. When a tenant files an Application for Dispute Resolution in which the tenant is applying to cancel a Notice to End Tenancy the tenant has the burden of proving that the landlord was served with the Application for Dispute Resolution in accordance with section 89(1) of the *Residential Tenancy Act (Act)*.

Section 89(1) of the *Act* stipulates, in part, that a tenant must serve a landlord with an Application for Dispute Resolution in one of the following ways:

- by leaving a copy with the person;
- by leaving a copy with an agent for the landlord;
- by sending a copy by registered mail to the address at which the person resides or carries on business as a landlord; or
- as ordered by the director under section 71 (1) of the *Act*.

The Tenant submitted no evidence to show that the Application for Dispute Resolution was personally served to the Landlord or an agent for the Landlord and I cannot, therefore, conclude that the Landlord was served in accordance with section 89(1)(a) or 89(1)(b) of the *Act*.

The Tenant submitted no evidence to show that the Application for Dispute Resolution was served by registered mail and I cannot, therefore, conclude that the Landlord was served in accordance with section 89(1)(c) of the *Act*.

The Tenant submitted no evidence to show that the director has authorized him to serve the Application for Dispute Resolution in a different manner and I cannot, therefore, conclude that the Landlord was served in accordance with section 89(1)(e) of the *Act*.

On the basis of the testimony of the Agent for the Landlord, who stated the Landlord did not receive the Application for Dispute Resolution, and in the absence of evidence to cause me to conclude that the Landlord received the Application for Dispute Resolution, I cannot conclude that the Application has been sufficiently served pursuant to sections 71(2)(b) or 71(2)(c) of the *Act*.

I specifically note that section 89(1) of the *Act* does not permit a Tenant to serve an Application for Dispute Resolution by email or by posting it on a door.

As the Landlord has not been served with the Application for Dispute Resolution and the Notice of Hearing in accordance with section 89(1) of the *Act* and the Agent for the Landlord stated these documents have not been received by the Landlord, I dismiss the Application for Dispute Resolution with leave to reapply.

I note that this decision does not extend the timeline for filing an Application for Dispute Resolution that is established by section 47(4) of the *Act*. The Tenant has the right to apply for more time to dispute a notice to end tenancy, pursuant to section 66 of the *Act*, providing the Tenant is able to make that application prior to the effective date of the Notice to End Tenancy.

As I have not allowed the Application for Dispute Resolution to proceed, I have not viewed the Notice to End Tenancy that is the subject of this Application for Dispute Resolution, nor have I determined whether one was submitted as evidence. As I have not viewed the Notice to End Tenancy, I am unable to ascertain whether it complies with section 52 of the *Act* and I have not granted an Order of Possession pursuant to section 55(1) of the *Act*.

Conclusion

The Application for Dispute Resolution 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: June 21, 2016

Residential Tenancy Branch