



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR, MNDC, FF, CNR, CNC

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an order of possession for unpaid rent and for cause pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46; and
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

Both parties attended the hearing by conference call and provided affirmed testimony. The tenant provided affirmed testimony that he served the notice of hearing package via Canada Post Registered Mail on June 10, 2016. The landlord confirmed receipt of the hearing package in this manner. The tenant did not submit any documentary evidence.

The landlord provided affirmed testimony that he served the notice of hearing package by posting it to the rental unit door on June 13, 2016. The tenant disputes this claiming that he was not served with the landlord's notice of hearing package. The landlord stated that he had submitted a copy of a proof of service document as part of his documentary evidence as confirmation of service. The landlord stated that the submitted documentary evidence was also posted to the rental unit door on June 28, 2016. The tenant disputed that no evidence has been received from the landlord. The landlord provided a witness, H.H. who would confirm service of the documentary evidence. The landlord was cautioned to not lead the witness in providing any evidence, but was told that he would ask the witness, what he was a party to. The landlord asked the witness if, "he witnessed the landlord serving the documentary evidence by posting it

to the rental unit door on June 28, 2016". The witness answered, "yes". When asked to provide more details of the service, the witness stated that he did not have any independent knowledge of when service took place. I find that the landlord failed to ask a proper question and instead lead the witness by providing the details of service to the witness. On this basis, I find that the evidence of the witness is not credible and shall not be used as confirmation of service. As such, the landlord has failed to establish that the tenant was properly served with the landlord's submitted documentary evidence. The landlord's documentary evidence shall be excluded as he has failed to properly serve it to the tenant. I also find that as the landlord has failed to provide sufficient evidence that the tenant was properly served with the landlord's notice of hearing package as per section 89 of the Act that the landlord's application is dismissed with leave to reapply.

The tenant provided affirmed testimony that he served the amended application for dispute on June 26, 2016 via regular mail to the landlord. The landlord disputed that he has not received any amended application for dispute from the tenant. The tenant is unable to provide any evidence to support his claim that the landlord was served with the amended application for dispute. I find that as the tenant is unable to provide sufficient evidence to satisfy me that the landlord was properly served with the amended application for dispute filed on June 24, 2016 that this portion of the tenant's application is dismissed for lack of service.

The landlord provided affirmed testimony that he served the tenant with the amended application for dispute by posting it to the rental unit door, but is unable to provide a specific date of service. The tenant disputes the landlord's claim stating that he has not received the landlord's amended application for dispute. The landlord relies upon his witness, H.H. as confirmation of service. During the witnesses affirmed testimony the landlord asked the witness, "You saw me post the evidence package to the door on June 28 in the evening didn't you?" The witness, stated that he did see the landlord post the evidence to the door, but was not sure of the date. I find on a balance of probabilities based upon the conflicting and disputed evidence of both parties that the landlord has failed to properly serve the tenant with his amended application for dispute. As such, this portion of the landlord's application is dismissed with leave to reapply.

The hearing shall proceed on the tenant's application to cancel a notice to end tenancy issued for unpaid rent.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 10 Day Notice?

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 both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

Both parties confirmed that neither party has submitted a copy of the 10 Day Notice.

Both parties have agreed that this tenancy was subject to a signed tenancy agreement dated January 1, 2008 in which the monthly rent is \$925.00 payable on the 1st day of each month. A security deposit of \$467.50 was paid.

Both parties agreed that the 10 Day Notice dated June 3, 2016 was issued and stated that the tenant failed to pay rent of \$925.00 that was due on June 1, 2016. The tenant provided testimony that the effective end of tenancy date of June 16, 2016 was indicated on the notice. The landlord disputed this stating that an effective end of tenancy date of June 13, 2016 was on the notice.

Section 46 says a landlord may end a tenancy by giving notice to end the tenancy for unpaid rent. In this case before me neither party has supplied a copy of the 10 Day Notice to End Tenancy for Unpaid Rent. I spent a large portion of the hearing explaining the crucial and vital nature of this document to both parties. The Notice is not a trivial piece of information. It is the foundation that a landlord relies on to assist in their application to end tenancy for unpaid rent. Neither party could agree to all of the contents of the Notice. The tenant is entitled to have a full answer and defence of any allegation made against them as is required under the Natural Laws of Justice.

Both parties are unable to agree to the contents of the 10 Day Notice and in the absence of a copy provided by either party, I find that the tenant's application to cancel the 10 Day Notice 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: July 18, 2016

Residential Tenancy Branch