



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, MNSD, FF

Introduction

This hearing was scheduled to deal with cross applications. The tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities. The landlord applied for an Order of Possession for unpaid rent or utilities and a Monetary Order for unpaid rent or utilities and authorization to retain the security deposit. The landlord subsequently submitted an Amendment to Application for Dispute Resolution seeking to increase the monetary claim to include additional amounts for rent, utilities, and repair of damage. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the outset of the hearing, both parties confirmed that the tenants have since vacated the rental unit. As such, I found the tenants' request to cancel the 10 Day Notice and the landlord's request for an Order of Possession to be moot and the only outstanding issue before me was the landlord's monetary claim.

Preliminary Issue -- Service of hearing documents

As to service of the landlord's Application for Dispute Resolution, the landlord testified that she sent the hearing package to a person who lives on property next to the rental unit (the neighbour) and the neighbour served the documents upon the tenants. The landlord was uncertain as to the date the neighbour served the hearing packages or which tenant received the landlord's hearing packages. The tenant testified that the neighbour served a second 10 Day Notice to End Tenancy but not the landlord's Application. The landlord appeared to be confused as to which documents the neighbour served. The landlord provided the name and telephone number for the neighbour and I attempted to contact the neighbour during the hearing. The telephone was answered by the neighbour's husband who advised me that the neighbour was unavailable as she was in school all day.

As for service of the landlord's Amendment, the landlord testified that she sent the Amendment to both tenants in a single registered mail envelope on November 13, 2016. The tenant acknowledged receipt of the Amendment.

Under section 59 of the Act, an applicant is required to serve an Application for Dispute Resolution, along with other required documents (referred to as the hearing package) within three days of filing. An applicant must be prepared to prove service of a hearing package upon each respondent in a manner that complies with the Act during the hearing. Considering the tenants denied receiving the landlord's Application, landlord's uncertainty as to service, and the inability to contact the neighbour during the hearing in the absence of a sworn statement from the neighbour, I find the landlord did not satisfy me that each tenant was served with the landlord's Application in a manner that complies with the Act.

The landlord's Amendment was not served upon each tenant the tenant acknowledged receipt of it. In any event, service of an Amendment does not replace service of an Application since an Amendment does not contain all of the information that is required on an Application.

As I was not satisfied that the landlord met her obligation to prove service of the Application and Amendment upon each tenant in accordance with the Act I dismissed the landlord's claims with leave to reapply. I note that this does not extend any applicable time limits under the 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: December 06, 2016

Residential Tenancy Branch