



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (“Act”), I was designated to hear an application regarding the above-noted tenancy. The landlords applied for:

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

The tenant did not attend this hearing, which lasted approximately 18 minutes. One of two landlords, landlord MB (“landlord”) attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she had authority to speak on behalf of her husband, “landlord DB,” the other landlord named in this application, as an agent at this hearing (collectively “landlords”).

Preliminary Issue – Service of Landlords’ Application

The landlord testified that the tenant was served with the landlords’ application for dispute resolution hearing package on November 3, 2016, by way of registered mail. The landlords provided a Canada Post receipt and tracking number with their application. The landlord confirmed the tracking number verbally during the hearing. During the hearing, I checked the tracking number on the Canada Post website and advised the landlord that an employee at the Residential Tenancy Branch (“RTB”) signed for the mail package when it was unclaimed by the tenant and returned to sender. I notified the landlord that I had an envelope addressed to the tenant with the landlord’s name and the RTB office address as the landlords’ address for service. The landlord said that she never received that envelope and she did not know what I was talking about.

When questioned, the landlord explained that she mailed the application package to the tenant but used the RTB’s address as the return mailing address for the landlords. She

said that because she was mailing legal documents given to her by the RTB, she used the RTB address. She said that the tenant lives in the basement of the same house shared by the landlords who live on the upper floor so she did not want to use the upper floor as the address for service of the landlords. When I questioned the landlord as to why she used the upper floor as the landlords' service address on the landlords' application for dispute resolution, she did not offer an explanation.

As per Residential Tenancy Policy Guideline 12:

1. ADDRESS FOR SERVICE

Any applicant for dispute resolution must provide an address for service. This could be a home, business or other address that is regularly monitored.

I find that the tenant was not properly served with the landlords' application as required by section 89 of the *Act* and Residential Tenancy Policy Guideline 12. The landlords did not provide a correct return address for service when they mailed their application documents to the tenant. They indicated an RTB office address, which is not a place where the landlords live, carry on business or have an agent. I find that the tenant did not have proper notice of where to serve the landlords with any responsive evidence because an incorrect address for service was used. It appears that the RTB is making the application against the tenant, when, in fact, the landlords were making the application.

At the hearing, I advised the landlord that the landlords' application to recover the \$100.00 filing fee was dismissed without leave to reapply and the application for an order of possession for cause was dismissed with leave to reapply. I notified the landlord that she could file a new application for dispute resolution and pay a new filing fee if she wished to pursue this matter further.

The landlords are required to prove service at the next hearing, including the date, method and proof of service. The landlords are also required to include their correct return mailing address if they send any documents to the tenant by registered mail. They must also include their correct service address on their application. I cautioned the landlord about serving evidence on time, according to the RTB *Rules of Procedure*.

During the hearing, the landlord asked for legal advice as well as information about various provisions of the *Act*. I notified the landlord that I could not provide this information to her. I explained that she could retain a lawyer in order to obtain legal advice or speak to an information officer at the RTB for information about the hearing

process and the *Act*, not for legal advice. I notified the tenant that the contact information for the RTB information officers was contained on the landlords' application.

Conclusion

The landlords' application to recover the \$100.00 filing fee is dismissed without leave to reapply.

The landlords' application for an order of possession for cause 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: December 20, 2016

Residential Tenancy Branch