



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, FF

Introduction

This hearing was scheduled to deal with a landlord's application for a Monetary Order for unpaid rent and damage or loss under the Act, regulations or tenancy agreement. The landlord identified two tenants as respondents. Neither respondent appeared at the hearing.

At the commencement of the hearing, I explored service of the hearing documents upon the respondents with the landlord. The landlord stated that the hearing documents were "left at the door". Then the landlord stated that he gave them to the "tenant's son". Given the conflicting statements I asked the landlord to elaborate. The landlord explained that he went to the rental unit and expected that the tenants would not be home but when he knocked the tenant's son answered the door so he gave the hearing documents to the tenant's son. Since there were two tenants listed on the application I asked the landlord to identify which tenant he was referring to. The landlord identified the person he served as being the son of JF (initials are used to protect the parties' identity). The landlord was not exactly sure of the date he served the hearing packages but stated it was on or about June 27, 2016.

I enquired as to whether the tenants still occupy the rental unit. The landlord testified that he found the rental unit vacant in the second week of July 2016. I noted that in filing this application on June 27, 2016 the landlord had not requested an Order of Possession. The landlord explained that he had been provided an Order of Possession pursuant to a previous hearing (file number provided on the cover page of this decision).

I informed the landlord that a monetary claim must be served upon each tenant personally or by registered mail, unless the landlord has an order from the Director authorizing an alternative method of service and that serving the tenant's son does not meet the service requirements of the Act with respect to monetary claims. The landlord then stated that the other named respondent, DT, is the tenant's son.

I proceeded to review the documentation that was submitted by the landlord for this proceeding. I noted that there was no tenancy agreement provided and that in the documentation that was provided there is no indication that the tenant is anyone other than JF. I also explored the evidence that had been submitted for the previous dispute resolution proceeding and I noted that there was a 10 Day Notice and the front page of a tenancy agreement provided. Both of those documents identify the only tenant as being JF.

I informed the landlord that was unsatisfied the DT was a tenant based upon the evidence before me. The landlord pointed out that he had named two tenants in filing his application and that is evidence that DT is a tenant. I informed the landlord that the application is to be supported by evidence.

The landlord then claimed that he had a tenancy agreement that names both tenants in his possession and that he could produce it for my review after the teleconference call ended. The landlord did not explain why he had not produced the document when he filed this application and served DT. Nor, did he explain why the tenancy agreement submitted for the previous hearing indicated that JF was the only tenant.

Rule 3.17 of the Rules of Procedures, provides in part:

3.17 Consideration of new and relevant evidence

Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC office in accordance with the Act or Rules 3.1, 3.2, 3.10, 3.14 and 3.15 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.

The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

Both parties must have the opportunity to be heard on the question of accepting late evidence.

If the arbitrator decides to accept the evidence, the other party will be given an opportunity to review the evidence.

[my emphasis underlined]

In keeping with Rule 3.17, I declined to accept any late evidence since the landlord did not provide a reason it was not submitted at the time of filing and serving DT and the landlord acknowledged that he could not serve either tenant with any additional evidence since does not know where to locate them.

Since JF was not served with the landlord's application in a manner that complies with section 89(1) of the Act, I dismiss the landlord's application against JF with leave to reapply. The landlord's application against DT is dismissed as I find the landlord failed to provide sufficient evidence to demonstrate that DT was a tenant.

The landlord indicated he was not satisfied with my decision and sought to speak to someone else about this matter. I referred the landlord to the general information telephone lines for the Residential Tenancy Branch.

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: January 03, 2017

Residential Tenancy Branch

