



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes CNR LRE MNDC OLC PSF RR RP FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

- cancellation of the landlord's 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to set conditions on landlord's right to enter the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing. The landlord advised the issue of the Notice to End Tenancy has been resolved as the tenant paid the outstanding rent within 5 days of service of the Notice.

Preliminary Issue: Service of Tenant's Application

The tenant testified that she served the landlord with the application for dispute resolution package on January 19, 2017 by sending it by express post to the landlord's address for service.

The landlord testified that he did not receive the application until January 27, 2017 as the mail was delayed due to the tenant not indicating the unit # on the mail address label. In addition, the tenant did not require a signature on delivery so the item was just deposited in the mailbox until retrieved by the landlord. The landlord submits he did not have sufficient time to respond to the tenant's application as it was only received 12 days before the hearing date. The landlord also submits that the application for dispute resolution form was not included in the package he received so he did not have the full particulars of the claim.

Section 89 of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution:

89(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:

- (a) *by leaving a copy with the person;*
- (b) *if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) *by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) *if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) *as ordered by the director under section 71(1) [director's orders: delivery and service of document]...*

As per section 89(1)c an application may be sent by registered mail. Express post is not registered mail as it does not require a signature upon delivery unless this option is specifically requested by the sender. Further, I accept the landlord's testimony and evidence that the unit number was not identified on the address label further delaying delivery.

Rule 3.1 and Rule 3.14 of the Residential Tenancy Branch (the Branch) Rules of Procedure requires that an applicant must, within 3 days of it being made available and not less than 14 days prior to the hearing, serve the respondent with a copy of the hearing package. The hearing package was received by the landlord until 12 days prior to the hearing. I find the landlord did not have a sufficient opportunity to respond to the application and did not receive the full particulars of the claim.

The tenant's application is dismissed with leave to reapply.

Conclusion

I dismiss the tenant's application 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: February 08, 2017

Residential Tenancy Branch