



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

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

- an Order of Possession for unpaid rent, pursuant to section 55; and
- a monetary order for unpaid rent, pursuant to section 67

The tenant did not attend the hearing, which lasted approximately 23 minutes. The landlord and her agent, WP attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that her agent, who is her husband, had authority to speak on her behalf at this hearing, as he said he was the co-owner of the rental unit.

Preliminary Issue – Direct Request Proceeding and Service

This hearing was originally scheduled as a direct request proceeding, which is a non-participatory hearing. An "interim decision," dated April 5, 2017, was issued by an Adjudicator for the direct request proceeding. The interim decision adjourned the direct request proceeding to this participatory hearing.

The landlord was required to serve the tenant with a copy of the interim decision, the notice of reconvened hearing and all other required documents, within three days of receiving it, as outlined in the interim decision itself.

The landlord confirmed that she received the interim decision on April 6, 2017. She stated that she sent the above documents to the tenant by way of registered mail on April 6, 2017. The landlord provided two Canada Post receipts and one tracking number with her application. The landlord verbally confirmed the one tracking number during the hearing. She said that the mail package was returned to her.

When I asked whether she was sure about the date, the landlord then changed her testimony to state that the package was mailed on April 7, 2017. When I asked the landlord to clarify which was the correct date, she became upset and referred to one receipt that stated April 6, 2017 and the other receipt that stated April 7, 2017. When I asked her whether she went to the post office twice, she said no. She then said that maybe she went on the night of April 6, 2017 and they gave her a receipt for the next day of April 7, 2017.

The landlord's agent claimed that he was the one who mailed the package and that it was probably the date on the one receipt that said April 7, 2017. He then asked me if that was the "binding date" and how to get Canada Post to prove it. I notified him that I did not know when he mailed the documents and I could not provide him with legal advice on how to proceed with Canada Post.

I asked the landlord and her agent to provide me with clear testimony regarding the date of service of the above required documents and they failed to do so. The landlord provided two receipts with two different dates and also testified regarding two different dates at the hearing. The package was returned to sender, according to the landlord. At the hearing, I advised the landlord that I could not confirm that the tenant was served with the interim decision and notice of reconvened hearing in accordance with section 89 of the *Act*. Both the landlord and her agent were upset by my decision and continued to argue about service, which is why the hearing lasted 23 minutes.

I notified the landlord that her application was dismissed with leave to reapply. I informed her that she would be required to file a new application for dispute resolution, pay another filing fee and provide proof of service at the next hearing, if she chooses to pursue this matter further.

Conclusion

The landlord's entire application 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: May 12, 2017