



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT CNL MNDC OLC FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for: more time to make an application to cancel the landlord's Notice to End Tenancy pursuant to section 66; cancellation of the landlord's Notice to End Tenancy pursuant to section 49; a monetary order for compensation for damage or loss under the *Act* pursuant to section 67; an order requiring the landlord to comply with the *Act* pursuant to section 62; and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Preliminary Matter: Service of Documents

At the outset of the hearing, a lawyer attended. He testified that he had previously represented the landlord but that he no longer represents the landlord. He attended out of an abundance of caution to provide testimony that he had been served with materials for the landlord but that he no longer represents her; and that he returned the materials sent to him as he is unable to reach the landlord (has no contact information). The lawyer reiterated that he is not agent for the landlord.

The tenant testified that she served the landlord by hand delivering a copy of her Application for Dispute Resolution to the lawyer (who attended this hearing briefly). She testified that she also hand delivered a copy of her Application for Dispute Resolution to the residence containing her former rental unit. However, she testified that the residence did not appear to be occupied and has now, as of the date of this hearing been demolished.

Residential Tenancy Policy Guideline No. 12 sets out the ways in which one party must serve hearing materials to another party. Policy Guideline No. 12 reinforces the special rules for service of certain documents, including but not limited to an application for

dispute resolution. With respect to service of an application for dispute resolution, section 89 of the Act reads,

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;
- ...
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

During this hearing, the tenant provided candid testimony that she was uncertain as to whether the landlord/respondent resided in the rental premises at all. Evidence was submitted that the landlord is currently in another country. The tenant did not provide a copy of the ADR with notice of this hearing to the landlord/respondent in person. The tenant did not send a copy of the ADR package by registered mail addressed to the landlord at the landlord's residence or place of business. The tenant did not apply, prior to this hearing for an order for subservice allowing the tenant to serve the landlord by an alternative method of service. The tenant did provide a copy of the ADR package to a lawyer that was in fact an agent of the landlord.

Residential Tenancy Policy Guideline No. 12, with respect to the terms of service at section 88 to 90 in the Act states that, when the respondent (in this case the landlord) does not appear at a Dispute Resolution hearing, the applicant (the tenant) must be prepared to *prove* service under oath.

Proper service of documents is essential to the Residential Tenancy Dispute Resolution process. Service of documents is restricted by timelines and methods of service to underscore its importance. It is essential that a party be able to prove that they have sufficiently served the documents for a Residential Tenancy Dispute Resolution hearing. Prior to considering the details of the tenant/applicant's claim, I must be satisfied that the tenant/applicant sufficiently served the other party, allowing that party an opportunity to know the case against them and attend the dispute resolution hearing.

I find that the tenant submitted insufficient evidence to show that the landlord continues to receive mail or reside in any manner at the rental premises. There was insufficient evidence to show that the tenant had served the ADR and notice of hearing in a manner that ensured the landlord was or should have been aware of this hearing. Therefore, I find that there was insufficient evidence to prove that the tenant served the landlord sufficiently to proceed with this application.

Given the lack of certainty with respect to service, I must dismiss the tenant's application.

Conclusion

The tenant's application is dismissed in its entirety 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 18, 2017

Residential Tenancy Branch