



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding OCAN.CA MEDIA INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, FF

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated May 31, 2017 ("1 Month Notice"), pursuant to section 47; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord did not attend this hearing, which lasted approximately 43 minutes. The tenant's agent, JR ("tenant") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Preliminary Issue – Service of Tenant's Application

When the tenant called in to the hearing, he was unprepared to provide evidence. When I confirmed what he had applied for, he told me to "hold on" and went to find his application. When I asked how he served his application to the landlord, he again told me to "hold on" to find his registered mail receipts. Each time, the tenant left the phone and went to search for his documents. When I asked whether the tenant was ready to proceed with the hearing because he had spent 8 minutes searching for his documents, he said that he was.

The tenant stated that the landlord was served with his application for dispute resolution hearing package by way of registered mail. He initially provided a series of numbers, claiming that it was a Canada Post registered mail tracking number. When I notified him that a typical tracking number included two letters at the beginning, nine numbers in between, and two letters at the end, he began searching for more mail receipts.

The tenant initially testified that he served the landlord with the tenant's application for dispute resolution hearing package by way of registered mail on June 20, 2017. He provided me with a Canada Post tracking number verbally. When I looked up the number on the Canada Post website tracking report, it indicated that the package was mailed out on June 28, 2017 and the

tenant signed for the package in his name. When I questioned the tenant about this, he agreed that he signed for the package and would provide me with a new tracking number.

The tenant then testified that he served the application on June 29, 2017 and provided a Canada Post tracking number verbally. When I looked up the number on the Canada Post website tracking report, it indicated that the package was mailed out on June 20, 2017 and someone signed for the package in the name of someone with the initials of "WY," not the landlord's name or initials. When I questioned the tenant about this, he said that he would provide me with another new tracking number.

The tenant then testified that he served the application on June 30, 2017 and provided a Canada Post tracking number verbally. When I looked up the number on the Canada Post website tracking report, it indicated that the package was mailed out on June 30, 2017 and the tenant signed for the package in his name. When I questioned the tenant about this, he agreed that he signed for the package and would provide me with another new tracking number.

The tenant then testified that he served the application on June 30, 2017 and provided a Canada Post tracking number verbally. When I looked up the number on the Canada Post website tracking report, it indicated that the package was mailed out on June 30, 2017 and someone signed for the package in the name of "NSR NSR," not the landlord's name or initials. When I questioned the tenant about this, he changed the numbers in the original tracking number four different times. When I confirmed the final sequence and numbers, it confirmed the above signatory and date.

When I questioned the tenant as to what documents he served to the landlord, he stated that he served his notice of hearing. He then said that he served his application later because the Residential Tenancy Branch ("RTB") had delayed providing him with a copy of his filed application. He said that the delay was 20 days and he had numerous emails with the RTB regarding these issues. I notified him that I did not have a copy of these emails in his file. He became upset and said that everything was sent to the RTB and I should have a copy. He said that the Minister of Housing was aware of this issue and he would be speaking to her about this claim.

RTB Policy Guideline 12 states the following, in part, with respect to proof of service by registered mail:

Proof of service by Registered Mail should include the original Canada Post Registered Mail receipt containing the date of service, the address of service, and that the address of service was the person's residence at the time of service, or the landlord's place of conducting business as a landlord at the time of service as well as a copy of the printed tracking report.

I find that the tenant has failed to sufficiently demonstrate that the landlord was served with the tenant's application in accordance with section 89 of the *Act*. The tenant was unable to provide

any registered mail receipts to confirm service of his documents. The tenant changed his date of service three times: June 20, June 29 and June 30, 2017. The tracking reports indicated three dates of service, which did not always match with the tenant's evidence: June 28, June 20, and June 30, 2017. Two of the packages were received and signed for by the tenant. Two of the packages were received and signed for by other people who did not have the same name or initials as the landlord's name.

At the hearing, I advised the tenant that I could not confirm that the landlord was served with the correct documents on a specified date in accordance with section 89 of the *Act*. The tenant provided conflicting and changing information throughout the hearing, despite the fact that I provided him with 43 minutes in order to locate his documents, confirm various tracking numbers, ask me questions and clarify information.

I notified the tenant that his application was dismissed with leave to reapply, with the exception of the \$100.00 filing fee. I notified him that he would be required to file a new application and pay a new filing fee in order to pursue this matter further. I informed him that the dismissal did not extend any limitation deadlines for filing to dispute the 1 Month Notice.

The tenant said that the landlord consented to reschedule the hearing in six weeks but he only obtained the consent verbally on the night before the hearing. I asked the tenant whether he had followed the proper procedure to reschedule a hearing by consent, by providing a signed, written document to the RTB prior to the hearing, and he said that he did not. I notified him that I could not reschedule the hearing without proof of the landlord's consent and that I was required to make a decision about his claim at this hearing.

Preliminary Issue – Inappropriate Behaviour by the Tenant during the Hearing

Rule 6.10 of the RTB *Rules of Procedure* states the following:

6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing

Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

Throughout the conference, the tenant kept talking at the same time as me and interrupting me. When I warned the tenant to stop this behaviour and listen to my questions before responding, he continued with this behaviour. He then said that he was having problems with his cellular phone and his cellular phone provider had to fix his phone. He then claimed that there was a delay in the phone reception.

The tenant then began telling me about his health problems and his medical conditions. When I notified him that I needed evidence regarding service, he continued talking about his health problems. He then stated that he would notify the Housing Minister about this claim and that she was well aware of his situation. Throughout the hearing, the tenant kept asking me the same questions and when I answered the questions repeatedly, he continued asking them repeatedly because he did not like the answers. He stated that he wanted me to record RTB administrative errors in my decision and he wanted to ensure that I would record what he wanted in my decision. When I notified him that it was up to my discretion what to record in the decision, he became upset.

The tenant asked how to proceed next. I notified him that he would be required to file a new application for dispute resolution and pay a new filing fee if he wanted to pursue this matter further against the landlord. I informed him that he would have to provide service evidence to the Arbitrator at the next hearing. He then asked what to include in his application. I notified him that I was not his lawyer and I could not provide legal advice to him on what to include in his application. I informed him that my role as an Arbitrator was to make a decision regarding his application, a decision which I had provided to him verbally and would record in writing and mail to him after the hearing. He then began complaining about his health, RTB administrative issues and what would be included in my decision repeatedly throughout the hearing. When I notified him that I had already answered all of his questions repeatedly, he continued asking them. The tenant became increasingly upset and confrontational throughout the hearing after I provided him with ample opportunities to ask questions and provide verbal testimony.

I informed the tenant that I had spent 43 minutes in the hearing, without the landlord present, giving him time to locate his evidence because he was unprepared for the hearing. I notified him that he could have brought his lawyer to the hearing, to which he responded that he had to notify the lawyer about a future hearing date. I informed the tenant that if he required help with the hearing or his application, he could retain an agent, advocate, lawyer, family member, friend or another person to assist him because he claimed to be nervous and ill with a medical condition.

The hearing began at 11:00 a.m. I ended the hearing at 11:43 a.m. after notifying the tenant that my decision had been made and I could not keep repeating the same answers to the same questions which he refused to stop asking.

I caution the tenant not to engage in the same inappropriate and disruptive behaviour at any future hearings at the RTB, as this behaviour will not be tolerated and he may be excluded from future hearings. In that event, a decision will be made in the absence of the tenant.

Conclusion

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

The remainder of the tenant's application is dismissed with leave to reapply. I make no findings on the merits of the matter. Leave to reapply is not an extension of any applicable limitation period.

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: August 10, 2017

Residential Tenancy Branch