



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("1 Month Notice") pursuant to section 47 as well as an order that the landlord comply with the Act pursuant to section 62.

The landlord did not attend this hearing, although I waited until 9:18 am in order to enable the landlord to connect with this teleconference hearing scheduled for 9:00 am. The tenant/applicant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions.

Preliminary Matter: Proof of service

The tenant testified that he provided the landlord with his Application for Dispute Resolution ("ADR") package with Notice of Hearing however he was unable to provide the date that he served the landlord with his ADR or the method by which he served the landlord with any certainty. He testified that he believed he served the materials the day after he received them from the Residential Tenancy Branch however he was unable to provide the date he received the documents. He testified that he delivered the package in person with a witness present however the tenant was unable to provide the full name of the witness nor was the witness available for this teleconference. The tenant did not submit any documentary evidence with which to prove service of documents to the respondent/landlord.

With respect to service of an application for dispute resolution, section 89 of the Act provided the rules for service of certain documents. It 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;
- ...

During this hearing, the tenant testified that he served the landlord with the dispute resolution documents/package but that he could not be certain of the date. With respect to the terms of service at section 88 to 90 in the Act, Residential Tenancy Policy Guideline No. 12 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. Personal service of an application for dispute resolution is an approved method of service. The Notice of Dispute Resolution Hearing provided to the tenant for his own records and to deliver to the landlord reads in part that “deadlines are critical” and that evidence processing instructions are included in the materials sent to the parties in a dispute.

It is essential that a party (in this case the tenant) 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 have a choice to attend the dispute resolution hearing.

The tenant was not able to provide the date that he served the landlord with his application and notice of this hearing nor was he able to provide evidence that would confirm the dates the landlord was served. The tenant also did not submit a copy of the Notice to End Tenancy that he sought to have cancelled. 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: August 04, 2017

Residential Tenancy Branch