



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, MNDC

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent, dated September 1, 2017 ("10 Day Notice"), pursuant to section 39;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated August 28, 2017 ("1 Month Notice"), pursuant to section 40; and
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 60.

The landlord did not attend this hearing, which lasted approximately 15 minutes. The tenant and her unidentified advocate attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. At the outset of the hearing, I asked the tenant whether she wanted her advocate to speak on her behalf or participate in the conference but she claimed that her advocate was only there for moral support and would not be participating in the conference.

At the outset of the hearing, when I asked the tenant to remove her call from speakerphone, she asked why she could not have it on speakerphone. I notified her that the speakerphone was interfering with the conference and I could hear echoing and feedback and was unable to hear properly or conduct the conference effectively. The tenant then confirmed that she had removed it from speakerphone.

Preliminary Issue – Service of the Tenant's Application

The tenant initially testified that her application for dispute resolution hearing package was served personally to the landlord's husband on September 9, 2017. When I asked her what documents she served at that time, since she had an application, notice of hearing, amendment to application, and written evidence on file, she stated that she did not know.

The tenant spent approximately 11 minutes of the 15-minute total hearing time looking through her paperwork in order to determine what she served to the landlord. She claimed that she had “months” of paperwork to look through and the landlord had disconnected her electricity so it was a difficult time for her. I notified her that she had since September 1, 2017, the date she filed her application, until this hearing date of December 1, 2017, a period of three months, to prepare her case. When I explained that I had to confirm that the other party, the landlord-respondent, had notice of this hearing in order to have the opportunity to attend, the tenant became upset.

I could hear the tenant’s advocate whispering into the call with the tenant, so I asked why her advocate was now providing evidence and testimony regarding service. The tenant claimed that her advocate was not providing evidence, she was just helping to identify the documents that were served. When I asked why the tenant could not confirm what documents she served and why she needed her advocate to tell her the answers, since she stated she did not want her advocate to participate in the conference, she then handed the phone over to her advocate.

The tenant’s advocate did not provide me with the spelling of her name and therefore is referenced as an “unidentified advocate” in this decision. She claimed that the tenant was nervous and needed assistance. I notified her that the tenant advised me at the beginning of the conference that she did not want her advocate to speak on her behalf. I informed the tenant’s advocate that if she wanted to participate in the conference, she would have to be affirmed under oath in order to provide evidence regarding service, she could not simply whisper answers to the tenant. The tenant’s advocate confirmed that she had participated in a number of Residential Tenancy Branch (“RTB”) hearings in the past and that she understood my comments. The tenant’s advocate confirmed that she would not be participating in the conference and would remain silent during the hearing.

Section 89(1) of the *Act* outlines the methods of service for an application for dispute resolution, which reads in part as follows:

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, 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 documents].*

I find that the tenant was unable to confirm what documents were served to the landlord's husband. The tenant also did not confirm whether the landlord's husband is an agent of the landlord. The landlord did not attend this hearing. Accordingly, I find that the tenant failed to prove service in accordance with section 89(1) of the *Act* and the landlord was not served with the tenant's application.

At the hearing, I informed the tenant that I was dismissing her application with leave to reapply. I notified her that she would be required to file a new application and pay a new filing fee, if she wished to pursue this matter further. I cautioned her that she would have to prove service at the next hearing, including specific evidence regarding what documents were served, and the date and method of service.

I cautioned the tenant that leave to reapply is not an extension of any applicable limitation periods. I notified her that she had deadlines to respect regarding cancellation of the 10 Day Notice and the 1 Month Notice and this dismissal did not extend those limitation periods. I informed her that I could not provide her with any legal advice and that she could speak to her advocate, who said she was experienced in RTB hearings, regarding next steps.

Preliminary Issue – Inappropriate Behaviour by the Tenant and her Advocate 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.

This hearing began at 9:30 a.m. and ended at 9:45 a.m. Most of the hearing time was spent waiting for the tenant to look through her paperwork in order to provide evidence regarding service. Throughout the hearing, the tenant continuously interrupted me and became upset by my questions, often arguing and debating issues rather than answering my questions. She also made rude and inappropriate comments to me, such as "are you kidding me," when I asked her questions about service.

During the hearing, the tenant and her advocate were whispering information to each other. They also passed the telephone back and forth to each other without warning to me. When I provided the tenant with my decision verbally, she became upset and asked for my name. I notified her that I had provided my name at the beginning of the hearing but I repeated my name

again for her, including the spelling. I asked her if she understood my decision and whether she had any questions and she continued making rude remarks to me. When I was attempting to ask for the tenant's contact information in order to send her a copy of this decision, the tenant abruptly disconnected from the hearing at 9:45 a.m. without warning to me.

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

Conclusion

The tenant's entire application is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation periods.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: December 01, 2017

Residential Tenancy Branch