



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* ("the *Act*") for: an Order of Possession for Cause pursuant to section 55 and to recover the filing fee from the tenants for the cost of this application pursuant to section 72.

The tenant AAS did not attend. The tenant MA ("previous co-tenant") also named in this application was present. The previous co-tenant provided undisputed testimony that he had moved out of the rental unit several months ago. Based on the testimony of both parties, I find that tenant AAS was entitled to remain in the rental unit, and continued to pay rent for the unit after the tenant MA vacated the unit. However, now the landlord sought to end the tenancy entirely. The landlord was given an opportunity to, testify and make submissions with respect to his application and service of documents.

Preliminary Matter: Service of Documents

At the outset of the hearing, as the current tenant ("the tenant") in the rental unit had failed to attend this hearing, the landlord was asked to describe how he had served the tenants with his Application for Dispute Resolution ("ADR") and the Notice of Hearing. The landlord testified that, because the previous co-tenant had assured him he would assist in having the tenant AAS move to a new rental unit, he thought the tenant would have vacated the unit by the date of this hearing. Therefore, the landlord testified that he did not serve his ADR with the Notice of Hearing to either of the tenants named in this application. The previous tenant, present at this hearing confirmed that he received no formal notice of this hearing or copy of the landlord's ADR package but the landlord had telephoned him and asked him to attend this hearing to testify about Tenant AAS.

The landlord stated that he did not choose to serve either tenant with the documents, including his application for dispute resolution, prior to this hearing based on his assumption that this hearing would not be necessary. 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. Beyond proving proper service, it is also 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 landlord/applicant's claim, I must be satisfied that he sufficiently served the other party, allowing that party an opportunity to know the case against them and attend the dispute resolution hearing. In his application, the landlord named Tenant AAS and the previous co-tenant however the undisputed evidence before me is that the landlord did not serve the hearing documents to either tenant.

Residential Tenancy Policy Guideline No. 12, in considering the terms of service at section 88 to 90 in the *Act*, states that when the respondent (in this case the tenant) does not attend a Dispute Resolution hearing, the applicant (in this case the landlord) must be prepared to prove service under oath. I find that the landlord was unable to prove service in accordance with section 89 and 90 (service of the Application for Dispute Resolution) or any acceptable alternative service under the *Act*.

In this particular case, both parties in attendance argued that the landlord's application should be allowed to proceed. The landlord relied on the prior co-tenant's testimony to prove that the tenant was aware of this application. The prior co-tenant testified that the landlord had spoken to him about wanting to end the tenancy with the current tenant (tenant AAS) and, because of the familial relationship between the current tenant and the prior co-tenant, he had hoped to assist the landlord. However, the prior co-tenant also testified that he had not been served with the landlord's ADR with Notice of Hearing or with the landlord's documentary evidence.

Within the fact sheets provided to the applicant by the Residential Tenancy Branch ("RTB"), the RTB Rules of Procedure (a link provided in materials) and within the *Act* itself, it is made very clear that the dispute resolution is a formal process intended to be fair to both parties. The important of service of documents is that each party receives an opportunity to review all documents and evidence prior to the hearing so that they are able to respond fully to the claim against them. In this case, the landlord did not serve

his ADR to either responding party to this hearing and this tenancy. Accordingly, the tenant did not have an opportunity to review the claim and evidence against her. Further, in this case, based on the testimony of both parties who attended this hearing, I have not been provided with sufficient evidence to prove that the tenant had sufficient notice of this hearing at all.

Given the testimonial evidence before me and the nature of this hearing (determination of whether the tenancy shall end or continue), I cannot be certain that the tenant was aware of this hearing. I note that I do not accept the testimony of the prior co-tenant (whose testimony changed over the course of the hearing when the rules of procedure were explained) that Tenant AAS had some knowledge of this hearing through him. This type of notice of hearing would not be acceptable to meet the standards of service in any case.

I find that the landlord was unable to prove that the tenant AAS was served with the dispute resolution documents and that he served his ADR package in accordance with the requirements of the Act. The landlord acknowledged that he did not complete the steps necessary in making an application for dispute resolution and therefore I am unable to determine whether the tenant was aware of this dispute resolution hearing. Consequently, I must dismiss the landlord's application for an Order of Possession and recovery of the filing fee against both tenants in that they were both served with documents in accordance with the Act.

Conclusion

I dismiss the landlord's application against both tenants without 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: February 06, 2018

Residential Tenancy Branch