



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution ("application") under the *Residential Tenancy Act* ("Act") for an order of possession based on the tenant breaching an agreement with the landlord and to recover the cost of the filing fee.

The landlord and tenant attended the teleconference hearing. I introduced myself to the parties and explained how the decision would be emailed to both parties. Both parties confirmed their email addresses at the outset of the hearing.

Regarding the landlord's documentary evidence, the tenant testified under oath that he was served the day before the hearing with the landlord's evidence. As a result, the landlord was asked what he was applying for in terms of the order of possession. The landlord testified under oath that he was applying for an order of possession based on the tenant failing to comply with the mutually settled agreement dated January 10, 2018. Both parties confirmed that the mutually settled agreement was based on a previous decision, the file number of which has been included on the cover page of this decision ("previous decision").

In the previous decision, the parties agreed on several terms, one of which was to end the tenancy as of March 31, 2018 at 1:00 p.m. The landlord was granted an order of possession already as a result of that previous decision. The landlord's original application dated November 30, 2017 indicates the following in the details of dispute:

"The 5 month fixed tenancy ends December 31st 2017 and it includes a "vacate" clause which he initialed. However, he has repeatedly sent me texts saying he intends to disregard this to ensure that I would be "stuck" with him and his unruly behavior for several months after"

[Reproduced as written]

The landlord then stated that he amended his application for an order of possession based on the tenant breaching the mutual agreement dated January 10, 2018 which the landlord stated was not amended until February 4, 2018.

Rule 4.6 of the Rules of Procedure (“rules”) states as follows:

“4.6 Serving an Amendment to an Application for Dispute Resolution

As soon as possible, copies of the Amendment to an Application for Dispute Resolution and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by section 89 of the *Residential Tenancy Act* or section 82 of the *Manufactured Home Park Tenancy Act* and these Rules of Procedure.

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution and supporting evidence as required by the Act and these Rules of Procedure.

In any event, a copy of the amended application and supporting evidence should be served on the respondents as soon as possible and must be received by the respondent(s) not less than 14 days before the hearing.

See also Rule 3 [*Serving the application and submitting and exchanging evidence*].”

[My emphasis added]

Based on the above, and taking into account that the landlord failed to amend his application before the 14 day timeline before the date of this hearing, I find the landlord did not serve the amendment on the tenant within the timeline provided for under rule 4.6. Therefore, **I am not satisfied** that the tenant was sufficiently served 14 days prior to the hearing with the amendment and that the tenant is prejudiced as a result from not having sufficient time to prepare or submit rebuttal evidence.

I have reached this decision after considering the fact that the parties entered into a mutually settled agreement on January 10, 2018 which provided sufficient time for the landlord to amend their application and serve it before February 1, 2018 in order to

comply with rule 4.6. Both parties have a right to a fair hearing and the tenant would not be aware of the amendment indicating the reason for the hearing had changed unless served with the amendment in accordance with rule 4.6 and be given the appropriate timeline to submit rebuttal evidence. Therefore, **I dismiss** the landlord's application **with leave to reapply due to a service issue**.

Conclusion

The landlord's application is dismissed with leave to reapply due to a service issue. This decision does not extend any applicable time limits under the *Act*. I have not considered the merits of the landlord's application as a result.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 14, 2018

Residential Tenancy Branch