



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, FF-L

Introduction

This hearing was convened by way of a telephone conference call in response to an online Application for Dispute Resolution (the “Application”) filed by the Landlord on January 10, 2018. The Landlord applied for an Order of Possession to end the tenancy for unpaid rent and to recover the filing fee from the Tenant.

Preliminary Matters and Findings

The Landlord named on the Application appeared for the hearing and provided affirmed testimony. However, there was no appearance by the Tenant for the 20 minute hearing. Therefore, I turned my mind to the service of documents by the Landlord for this hearing.

Section 59(3) of the *Residential Tenancy Act* (the “Act”) requires an applicant to serve the respondent with a copy of the Application within three days using the service methods outlined in section 89 of the Act. The purpose of such service is to put the respondent on notice of the scheduled hearing and give them an opportunity to respond to the claims being brought against them.

The Landlord testified that she was unsure whether she had served the Tenant with the Application, and the Notice of Dispute Resolution Proceeding documents which detailed the time and date of this hearing. The Landlord asserted that the Residential Tenancy Branch (RTB) had not sent any documents to her by email for service to the Tenant and claimed that she had obtained the call in details for this hearing from the automated email replies she received after she filed her Application.

I asked the Landlord to check her junk email, but she verified that no email from the RTB was there. The Landlord then informed me that the Tenant had also filed an

application and advised me of that file number, which I have noted on the front page of this Decision.

During the hearing I was able to confirm that a separate hearing had been scheduled by the RTB to hear the Tenant's claims on March 15, 2018. One of the issues elected by the Tenant to be dealt with in that hearing is a request to cancel a notice to end tenancy for unpaid rent, which was the basis on which the Landlord had applied to end the tenancy in this hearing.

The Landlord asserted that the RTB had not sent her any email for the service of documents to the Tenant. Accordingly, I informed the Landlord that I would verify with the RTB whether the documents were indeed emailed to the Landlord or if there had been an error in the issuing of the documents after the hearing. The Landlord was further informed that if the RTB had made an error, the Landlord's matters would then be reconvened and joined with the Tenant's application to be determined together at the March 15, 2018 hearing.

The Landlord was cautioned that she was still required to appear for the March 15, 2018 hearing and to respond to the Tenant's application as outlined in the documents she had been served by the Tenant. The Landlord was also advised that, pursuant to her rights under section 55(1) of the Act, she must be issued with an Order of Possession if the Tenant is unable to cancel the notice to end tenancy for unpaid rent in the March 15, 2018 hearing. This hearing was concluded, and the Landlord asked no other questions of me.

The RTB have confirmed that the Landlord was sent all the required documents for service to the Tenant for this hearing on January 12, 2018. The Landlord provided me with insufficient evidence to show that she was unable to receive these documents and I have no evidence before me that any technical error existed which prevented the Landlord from receiving the documents to serve to the Tenant.

The service of documents to a respondent party for dispute resolution proceedings is essential and imperative if natural justice and procedural fairness are to be followed. In the absence of the Tenant at this hearing and based on the evidence before me, I find the Landlord failed to pursue her Application diligently with the RTB and accordingly find that she did not meet the service requirements of section 59(3) and section 89 of the Act. Therefore, the Landlord's Application is dismissed. The Landlord is at liberty to re-apply and then ensure the Tenant is served pursuant to the Act.

The Landlord is still required to appear for the March 15, 2018 hearing to deal with the Tenant's claims. While I have given the Landlord leave to re-apply, the Landlord is still able to seek potential relief under section 55(1) of the Act at the March 15, 2018 hearing.

Conclusion

The Landlord failed to serve the Tenant with notice of this hearing. Therefore, the Landlord's Application is dismissed with leave to re-apply. This Decision is made on authority delegated to me by the Director of the RTB under Section 9.1(1) of the Act.

Dated: March 13, 2018

Residential Tenancy Branch