



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR
 MNDCL, MNDL, MNRL

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 day Notice”).

This hearing also dealt with a cross-Application filed by the Landlord under the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for damage, money owed or damage or loss under the *Act*, regulation, or tenancy agreement, unpaid rent, and recovery of the filing fee. The Landlord also sought an order for substituted service.

I note that section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Landlord, who provided affirmed testimony. The Tenant did not attend. The Landlord was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the Respondent must be served with a copy of the Application and Notice of Hearing. As the Tenant did not attend the hearing, I confirmed service of these documents as outlined below.

The Landlord testified that on March 29, 2018, the Application, the Notice of Hearing, and their evidence package were personally served on the Tenant in the presence of a witness. As a result, I find that the Tenant was served the Application, the Notice of Hearing, and the Landlord’s evidence on March 29, 2018.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure. However, I refer only to the relevant facts and issues in this decision.

At the request of the Landlord, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail address listed in the online application system.

Preliminary Matters

Preliminary Matter #1

At the outset of the hearing the Landlord testified that she was unaware that there was a cross-Application from the Tenant as the Tenant did not advise her of the Application or serve her with any documents. The Tenant did not attend the hearing to present any evidence or testimony for my consideration.

Section 59 of the *Act* states the following with regards to the service of the Application on the Respondent:

Starting proceedings

- 59** (3) Except for an application referred to in subsection (6), a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.

Rule 3.14 of the Rules of Procedure also states that documentary and digital evidence that is intended to be relied on at the hearing must be received by the Respondent and the Residential Tenancy Branch (the "Branch") directly or through a Service BC office not less than 14 days before the hearing.

Based on the undisputed testimony of the Landlord, I find that she was not served with the Application and the Notice of Hearing by the Tenant. As the opportunity to know the case against you and to prepare evidence and testimony in your defense are fundamental to the dispute resolution process, I find that it would be administratively unfair and a breach of both the principles of natural justice and the Rules of Procedure to allow the Tenant's Application. Further to this, I note that the Tenant did not appear at the hearing of her own Application to present any evidence or testimony in her defense. As a result, the Tenant's Application is dismissed without leave to reapply. As a result, the hearing proceeded based only on the Landlord's Application.

Preliminary Matter #2

The Landlord acknowledged that the evidence before me in relation to court and bailiff costs as well as damage to the rental unit were not served on the Tenant as she could not be located at the time these documents were obtained. As a result, the Landlord withdrew her claims for these costs with leave to reapply and the hearing proceeded based on the Landlord's claims for unpaid rent and substituted service only.

Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order for unpaid rent and recovery of the filing fee pursuant to sections 67 and 72 of the *Act*?

Is the Landlord entitled to an order for substituted service pursuant to section 71 of the *Act*?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the month-to-month tenancy began on March 1, 2017, and that rent in the amount of \$1,150.00 is due on the first day of each month.

The Landlord stated that the tenancy ended as the result of an order of possession obtained in a previous hearing and that a bailiff was required to remove the Tenant and her possessions from the rental unit on March 29, 2018. The Landlord stated that on March 29, 2018, the Tenant owed \$1,150.00 in outstanding rent for March 2018, and that she was unable to re-rent the unit for April 2018, due to the state of the rental unit and the fact that the Tenant was only removed by the bailiff on March 29, 2018. As a result, the Landlord also sought \$1,150.00 for loss of rent for April 2018. The Tenant did not appear to provide any evidence or testimony for my consideration.

The Landlord testified that the Tenant also refused to provide a forwarding address at the end of her tenancy and sought an order for substituted service so that she could serve the Tenant any subsequent Applications or any orders obtained as the result of this hearing on the Tenant by e-mail. The Landlord provided a screen shot which she stated shows a history of e-mail correspondence between herself and the Tenant. However, due to the quality of the document, most of the document was illegible. The Landlord also submitted a copy of an e-mail from the Tenant dated March 23, 2018.

When asked what efforts the Landlord had made to locate the Tenant, she stated that other than attempting to have the bailiff obtain her forwarding address upon enforcement of an Order of Possession, no other real efforts had been made to locate the Tenant. The Landlord also admitted that the Tenant has been spotted in the complex where her rental unit was located several times since the end of the tenancy as she has friends and acquaintances in the complex.

Analysis

I accept the Landlord's undisputed testimony that as of the date of the hearing, the Tenant owed \$2,300.00 in unpaid rent. As a result, the Landlord is therefore entitled to a Monetary Order in the amount of \$2,300.00.

The Landlord also sought an order for substituted service. Section 71 of the *Act* states that the director may order that a notice, order, process or other document may be served by substituted service in accordance with the order or that a document must be served in a manner the director considers necessary, despite sections 88 *[how to give or serve documents generally]* and 89 *[special rules for certain documents]*.

Policy Guideline #12 states, under section 14, that the party applying for substituted service must demonstrate that the party to be served cannot be served by any of the methods permitted under the legislation and that there is a reasonable expectation that the party being served will receive the documents by the method requested.

The Landlord testified that the Tenant has been seen in the complex several times since the tenancy ended as she has friends and acquaintances there. However, no efforts have been made to attempt to serve the Tenant in person during her attendance at the complex. Further to this, the Landlord did not provide any evidence or testimony that she has exhausted all available avenues to locate the tenant's forwarding address. As a result, I find that the Landlord has failed to satisfy me that the Tenant cannot be served by any of the methods permitted under the *Act*. Further to this, although the Landlord sought to serve the Tenant by e-mail, her last correspondence with the Tenant by e-mail was more than 30 days prior to the hearing and the e-mail submitted by the Landlord states that the Tenant cannot receive any messages as she no longer has internet. Although the Landlord stated she has had more recent contact with the Tenant by text message, there was no documentary evidence before me of that contact.

Based on the above, I find that the Landlord has failed to satisfy me, on a balance of probabilities, that the Tenant cannot be served by any of the methods permitted under

the legislation and that there is a reasonable expectation that the Tenant will receive the documents by e-mail. As a result, the Landlord's claim for substituted service is dismissed but I grant her leave to reapply should she re-establish communication with the Tenant by e-mail or other means.

As the Landlord withdrew several claims and was only partially successful on the remaining claims, I decline to grant her recovery of the filing fee.

Conclusion

Pursuant to section 67 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$2,300.00. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: May 3, 2018

Residential Tenancy Branch