



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNRL-S, OPR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlords on February 27, 2018 (the “Application”). The Landlords sought an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”). The Landlords also sought a Monetary Order for unpaid rent and reimbursement for the filing fee.

The Landlords filed an amendment to the Application which was received by the Residential Tenancy Branch on April 24, 2018 (the “Amendment”). The Amendment changed the amount of the monetary claim to account for further outstanding rent since the Application and added Landlord A.M. as a party to the proceeding.

The Landlords appeared at the hearing. The hearing process was explained to the Landlords and neither had questions when asked. The Landlords submitted documentary evidence prior to the hearing. I reviewed the documentary evidence with the Landlords who confirmed I had received all evidence submitted. The Landlords provided affirmed testimony. The Landlords were given an opportunity to provide relevant evidence, make relevant submissions and ask relevant questions.

The Tenant did not appear at the hearing. The Tenant had not submitted any evidence prior to the hearing.

I have considered all oral testimony of the Landlords and have reviewed the relevant documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

I addressed service of the hearing package and Landlord’s evidence. Landlord A.M. said the hearing package and evidence was sent by registered mail to the Tenant at the rental unit on March 6, 2018. Landlord A.M. said she understood that the Tenant still resided at the rental unit when the package was mailed. The Landlords had submitted a copy of the registered mail receipt with Tracking Number 1 on it. With the permission of the Landlords, I looked up the tracking number on the Canada Post website. The website shows the package was delivered

on March 8, 2018 and there is a signatory name that is not the Tenant's name. I am unable to view the signature because when I click on it a message appears stating "A Signature is available for this item but cannot be displayed on the Internet...". I told the Landlords the signatory name and asked if they knew who this person is. Landlord A.M. said it is the upstairs tenant at the rental address. Landlord A.M. then backtracked and said she did not know who this person is. I asked Landlord A.M. why she told me it is the upstairs tenant and she explained that the upstairs tenant has a similar name but not the same name. Landlord A.M. told me the name of the upstairs tenant.

I told the Landlords I had concerns about service of the hearing package on the Tenant. Landlord A.M. then said she texted the Tenant on the same day telling him the package was mailed and told the Tenant the date of the hearing. Landlord A.M. said the Tenant never confirmed he received the hearing package. Landlord A.M. said she never received confirmation from the upstairs tenant that the hearing package had been provided to the Tenant. Landlord A.M. confirmed the upstairs tenants live in a separate suite from the Tenant. Landlord A.M. said she addressed the package to the Tenant at the basement suite of the rental address. The customer receipt showing where the package was sent does not indicate it was sent to the basement suite at the rental address. I asked Landlord A.M. about this and I understood her to say someone at the post office completed the customer receipt.

The Landlords had also submitted a Canada Post registered mail receipt with Tracking Number 2 on it. Landlord K.S. said this relates to the Amendment package that contained the Amendment and a revised Monetary Order Worksheet.

While re-reviewing the Landlords' evidence after the hearing, I located a third Canada Post registered mail receipt with Tracking Number 3 on it dated April 17, 2018.

The *Residential Tenancy Act* (the "Act") and Rules of Procedure (the "Rules") set out service requirements in relation to applications for dispute resolution and evidence.

Section 59(3) of the *Act* states "...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 3.1 of the Rules states:

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;

- b) the Respondent Instructions for Dispute Resolution;
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch...with the Application for Dispute Resolution, in accordance with Rule 2.5...

Rule 3.5 of the Rules states that “[at] the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package...as required by the Act and these Rules of Procedure”.

The purpose of the service requirements in the *Act* and Rules is to put respondents on notice of the hearing and to give them an opportunity to respond to the claims being made against them. Service of the hearing package and evidence on a respondent is essential to ensure principles of natural justice and procedural fairness are applied.

I am not satisfied based on the evidence of the Landlords that the Tenant was served with the hearing package and evidence. Based on Landlord A.M.’s testimony regarding the name of the upstairs tenant, and on the signatory name on the Canada Post website, it seems likely that the hearing package and evidence was delivered to the upstairs tenant at the rental address. Although the signatory name is not the same as the upstairs tenant’s name, the first initial is the same and the last name is so similar it seems likely it is the same person. I note that when I read the signatory name out to the Landlords, Landlord A.M.’s first response was that it was the upstairs tenant. Landlord A.M. said she addressed the hearing package and evidence to the basement suite of the rental address; however, the Landlords provided no evidence to support this assertion. Further, the Canada Post customer receipt submitted does not indicate basement suite. In these circumstances, I am not satisfied that the hearing package and evidence was served on the Tenant in accordance with the *Act* and Rules.

I acknowledge that the Landlords texted the Tenant about the hearing package and told the Tenant the date of the hearing; however, I do not find this sufficient to fulfill the purposes of the service requirements in the *Act* and Rules.

I do not find it necessary to determine whether the Amendment package was served on the Tenant in accordance with the *Act* and Rules. The Amendment package does not provide the Tenant with the same information provided in the hearing package and evidence. As stated above, it is service of the hearing package and evidence that is essential to ensure principles of natural justice and procedural fairness are applied.

Based on the evidence of the Landlords, I do not know what the Canada Post receipt dated April 17, 2018 with Tracking Number 3 on it relates to. However, it cannot relate to the hearing

package and evidence as these were sent on March 6, 2018 according to the Landlords. Therefore, this receipt could not change my analysis.

Based on the above, I dismiss the Application and Amendment with leave to re-apply. However, I note the 10 Day Notice submitted as evidence is signed by Landlord K.S. but not dated as required by section 52 of the *Act*. The Landlords may want to contact the Residential Tenancy Branch and speak to an Information Officer regarding how to proceed in the circumstances.

As the Landlords were not successful in this application, I decline to award reimbursement for the filing fee.

Conclusion

The Application and Amendment is dismissed with leave to re-apply.

I decline to award reimbursement for the filing fee.

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

Dated: May 22, 2018

Residential Tenancy Branch