



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (“the *Act*”) for an order as follows:

- to cancel a One Month Notice to End Tenancy given for Cause (“the Notice”) pursuant to section 47 of the *Act*.
- repayment of the application fee by the landlord pursuant to section 72 (1) of the *Act*

Issue(s) to be Decided

Is the tenant entitled to an Order to cancel the landlord’s One Month Notice to End Tenancy, pursuant to Section 47 (4) of the *Act*?

Should the tenant be unsuccessful in seeking to cancel the One Month Notice to End Tenancy is the landlord is entitled to an order of possession pursuant to Section 55(1) of the *Act*?

Background and Evidence

Neither party filed a copy of the Notice. No documentary proof of service of the Notice was filed.

Under questioning the landlord referred to a copy of a Mutual Agreement to End Tenancy that had been filed and stated that she had “served” this document on the

tenant on February 1, 2018. She later stated that she had in fact also served a One Month Notice to End Tenancy and cited the fact that the tenant had brought an application to set a One Month Notice to End Tenancy aside as proof of this fact.

In her evidence the landlord stated that she had a picture on her phone showing that two documents were served on the tenant by posting on his door on February 1, 2018.

Analysis

Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

The landlord was unable to provide evidence that the Notice she issued complied with any of the form and content provisions of section 52 of the *Act*.

Sections 88 and 89 of the RTA confirm that there are prescribed methods for the service of different types of documents, including various forms of a Notice to End Tenancy.

Policy Guideline 12 (12) states that at the dispute resolution hearing, if the service is in dispute the arbitrator may consider evidence from both the party receiving the documents and, the party serving the document to determine the date of service and, the calculation of the time for responding. It also confirms the authority of the arbitrator to make an order that a document has been sufficiently served for the purposes of the *Act* based on section 71 (2) (b) of the *Act*. In doing so the arbitrator must consider procedural fairness and prejudice to the affected party.

Policy Guideline 12 (15) states that where proof of service is required the person who actually served the documents must either:

- Be available as a witness in the hearing to prove service OR
- Provide a signed statement with details of how the documents were served

However as noted above the landlord is unable to say exactly what documents were served in this manner even if I was willing to accept her evidence in terms of date and

process. The picture she referred to in her oral evidence was not one of the many pictures that she did enter into evidence.

Here the landlord has not met the onus to prove the service of the Notice on the tenant.

As the landlord is seeking to recover possession of the premises I am not able to proceed based on the evidence as filed and given at the hearing. I am not satisfied that the tenant has been put on any or sufficient notice of the claims against him. I am not satisfied therefore that he has had any or proper time and opportunity to respond to the claims against him.

I canvassed with the parties the possibility of either adjourning the hearing is to permit the landlord to prove the form and content of the Notice were correct and, that the Notice was properly served the tenant or, of having the hearing dismissed. Although this is the tenant's application, in all the circumstances the tenant was content that the hearing be dismissed without leave to apply and to withdraw the application for his filing fee.

Conclusion

The tenant's application for his filing fee is withdrawn. The tenant's application to cancel the Notice is dismissed 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: June 6, 2018

Residential Tenancy Branch