



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR DRI OLC MNDC MNSD

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order regarding a disputed additional rent increase pursuant to section 43;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38;

The hearing was conducted by conference call. The landlord did not attend the hearing.

Preliminary Issue: Service of Tenant's Amended Application

At the outset of the hearing, the tenant advised that she had vacated the rental unit as of October 15, 2018. Therefore, the tenant's original application to cancel a 10 Day Notice, dispute a rent increase and an order for the landlord to comply with the Act were all moot points at the time of this hearing. The tenant confirmed that the only outstanding issues were the monetary claims and a request for return of a security deposit contained in an amended application which was filed on October 29, 2018.

The tenant testified that on October 29, 2018, she sent a copy of the Amended Application to the landlord by Xpresspost. The tenant provided an Xpresspost mail receipt and tracking number. As per section 90 of the Act, an application served in this manner would be deemed served five days after being mailed which in this case would be on November 3, 2018.

As per Rule 4.6 of the Residential Tenancy Branch Rules of Procedure (the “Rules”), a copy of the amended application and supporting evidence should be served on the respondent as soon as possible and must be received by the respondent not less than 14 days before the hearing. The tenants’ application was required to be received or deemed received by November 1, 2018. The earliest date I could deem the landlord to have received the amended application was November 3, 2018 which is only 12 days before the hearing.

I find the landlord did not have sufficient notice to respond to the tenant’s application as it was not served within the time requirements of Rule 4.6. Also, given that the issues related to the tenant’s original application were now moot, it is possible that the landlord understood this matter to be resolved, hence did not participate in this hearing.

Conclusion

I dismiss the tenant’s application with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

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: November 16, 2018

Residential Tenancy Branch