Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PEAK PERFORMANCE ENTERPRISES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, MNDCL-S, MNRL-S, OPR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on November 1, 2018 (the "Application"). The Landlord applied as follows:

- For compensation for monetary loss or other money owed;
- To recover unpaid rent;
- To keep the security deposit;
- For an Order of Possession based on a 10 Day Notice; and
- For reimbursement for the filing fee.

The Representative for the Landlord appeared at the hearing with Legal Counsel. The Tenant did not appear at the hearing. I explained the hearing process to the Representative and Legal Counsel who did not have questions in this regard. The Representative provided affirmed testimony.

The Representative and Legal Counsel confirmed that the Landlord was no longer seeking an Order of Possession based on a 10 Day Notice as the Tenant had vacated the rental unit.

The Landlord had submitted evidence prior to the hearing. The Tenant had not submitted evidence. I addressed service of the hearing package and Landlord's evidence.

Our system indicated that there was a cross-application in relation to this matter. The file number for this is included on the front page of this decision. The hearing for this previous file took place November 20, 2018. I reviewed the decision for that previous file. The Landlord was represented by legal counsel although not the same Legal Counsel that appeared at this hearing. The previous decision states:

> At the outset of the hearing both parties confirmed that the tenant vacated the rental unit on or about November 07, 2018. The landlord confirmed regaining *defacto* possession of the unit as a result.

At this hearing, the Representative and Legal Counsel said the Tenant vacated the rental unit November 14, 2018.

Legal Counsel advised that the hearing package and evidence were sent to the rental unit by registered mail on November 7, 2018. Legal Counsel provided Tracking Number 1 as noted on the front page of this decision. I looked this up on the Canada Post website which shows a notice card was left on November 13, 2018 indicating where and when to pick up the package. The website shows a final notice was left November 17, 2018 in relation to the package. The website shows the package was unclaimed and returned to the sender.

I raised the issue of the date the Tenant vacated the rental unit and the date the hearing package and evidence were sent to the rental unit.

I asked the Representative and Legal Counsel why they had not brought up at the previous hearing that the Tenant vacated the rental unit November 14, 2018 and not November 7, 2018. The Representative and Legal Counsel advised that other legal counsel attended the hearing and the Representative was not aware of the discussion.

Legal Counsel submitted that it is the Tenant's responsibility to pick-up mail even though she has vacated a residence or that the Tenant should have re-routed her mail. Legal Counsel further submitted that the Tenant knows there is outstanding rent. Legal Counsel said the rental unit address is the address they had for the Tenant and that their position is they have satisfied the service requirement.

I asked the Representative and Legal Counsel if there was any evidence submitted in relation to service and they advised that there was not. The Representative and Legal Counsel said they could submit the Condition Inspection Report to show the vacate date.

I asked if the Tenant had provided a forwarding address. At first, the Representative said the Tenant had not. The Representative then said the Tenant had provided a forwarding address. The Representative could not provide the date the Tenant provided her forwarding address.

The Representative and Legal Counsel advised that the evidence package for the previous hearing was also sent to the Tenant at the rental unit at the same time as the hearing package and evidence for this hearing.

Legal Counsel asked to call her colleague to provide information about this issue of service. I allowed Legal Counsel to do so; however, her colleague was not available.

Section 88 of the *Residential Tenancy Act* (the "*Act*") addresses service of evidence and section 89(1) of the *Act* addresses service of the hearing package. These sections require the following:

> 88 All documents, other than those referred to in section 89…that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:
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> …
>
> (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
>
> (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
>
> [emphasis added]
>
> 89 (1) An application for dispute resolution…when required to be given to one party by another, must be given in one of the following ways:
>
> …
>
> (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
>
> (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
>
> [emphasis added]

I do not accept that the Tenant vacated the rental unit November 14, 2018 and not November 7, 2018 given the statement in the previous decision. I do not find it sufficient that the Landlord was represented by different legal counsel at the previous hearing. The legal counsel who appeared at the last hearing was there representing the Landlord and is expected to know the information being confirmed on behalf of the Landlord. It is not sufficient for the Representative and Legal Counsel to now provide different information without any evidence to support their position that the Tenant vacated the rental unit November 14, 2018 and not November 7, 2018.

I note that the Representative and Legal Counsel said they could submit the Condition Inspection Report as evidence of the date the Tenant vacated. However, this was not submitted prior to the hearing. Rule 3.5 of the Rules of Procedure states:

> 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 and all evidence as required by the Act and these Rules of Procedure.

Parties are expected to submit their required evidence prior to the hearing and to attend the hearing prepared to prove service. I declined to allow the Representative and Legal Counsel to submit the Condition Inspection Report after the hearing had started.

I find the Tenant vacated the rental unit on or about November 7, 2018, as stated in the previous decision. The hearing package and evidence were only sent to the Tenant at the rental unit on November 7, 2018, the date she vacated. There was no notice of the package left for the Tenant at the rental unit until November 13, 2018, six days after the Tenant had vacated the rental unit. In these circumstances, I am not satisfied the Tenant was served with the hearing package and evidence in accordance with section 88 and 89(1) of the *Act* as the rental unit was no longer her residence as of November 7, 2018.

I do not accept the submission that it is the Tenant's responsibility to pick-up mail from an address that she no longer resides at or that she should have re-routed her mail. It is the Landlord's responsibility, as applicant, to serve the Tenant with the hearing package and evidence in a method permitted by the *Act*. Here, the Landlord failed to do so.

Whether the Tenant knows there is outstanding rent or not is irrelevant. The Tenant must be aware of the Application and the hearing. Here, there is no evidence before me that the Tenant was aware of the Application or hearing and I am not satisfied that the Tenant was served in accordance with the *Act* such that she can be deemed to have received the hearing package and evidence.

Nor is it relevant that the rental unit address is the address the Landlord had for the Tenant. If the hearing package and evidence are served by registered mail, they must be sent to the Tenant's residence or forwarding address as stated in section 88 and 89(1) of the *Act*. Here, the Landlord did neither. I note that this is so despite the Landlord being provided with a forwarding address for the Tenant.

I do not find it relevant that the evidence for the previous hearing was sent to the rental unit with the hearing package and evidence. Service of this evidence was not addressed at the previous hearing. It is clear from the Canada Post website that the hearing package and evidence were not claimed. The issue here is whether the Tenant should be deemed served. I do not accept

that she should be given the hearing package and evidence were sent to the rental unit the same day the Tenant vacated the rental unit.

In the circumstances, I am not satisfied of service and therefore dismiss the Application with leave to re-apply. The Landlord has 15 days from receipt of this decision to deal with the security deposit in accordance with the *Act*.

Conclusion

I am not satisfied of service and therefore dismiss the Application with leave to re-apply. The Landlord has 15 days from receipt of this decision to deal with the security deposit in accordance with the *Act*.
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: December 18, 2018

Residential Tenancy Branch