



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, FFT

Introduction

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

- more time to cancel a Notice to End Tenancy, pursuant to section 66;
- cancellation of the One Month Notice to End Tenancy for Cause (the "One Month Notice"), pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

This hearing was originally convened on November 13, 2018 and only the tenant attended. During that hearing I adjourned the hearing to allow time for tenant to find an interpreter as I was not able to understand him. An Interim Decision dated November 13, 2018 was mailed to both parties.

At today's hearing both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

I note that section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution 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 the *Act*.

Preliminary Issue- Service

The tenant testified that he personally served the landlord with the notice of dispute resolution package but could not recall on what date. The tenant did not enter into evidence any proof of service documentation. The landlord testified that she did not receive a notice of dispute resolution package from the tenant and was not informed of the November 13, 2018 hearing. The landlord testified that she only found out about today's hearing because the Residential Tenancy Branch mailed her the Interim Decision dated November 13, 2018.

Section 89 of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution:

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:

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (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;*
- (e) as ordered by the director under section 71(1) [director's orders: delivery and service of document]...*

The testimony of the parties in regard to the service of the notice of dispute resolution package is conflicting. The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

I find that since the tenant did not enter into evidence any proof of service documents, and the landlord has denied receiving the notice of dispute resolution package, I am not satisfied that the landlord was served in accordance with section 89 of the *Act*. The landlord's non-attendance at the original hearing also lends credence to her testimony that she was not made aware of that hearing. I therefore dismiss with leave to reapply the tenant's application for:

- more time to cancel a Notice to End Tenancy, pursuant to section 66; and
- cancellation of the One Month Notice to End Tenancy for Cause (the "One Month Notice"), pursuant to section 47.

At the hearing I notified the tenant that if he wished to pursue this matter further, he would have to file a new application. I cautioned him to be prepared to prove service at the next hearing, as per section 89 of the *Act*.

I dismiss the tenant's application for authorization to recover the filing fee for this application from the landlord, without leave to reapply.

Preliminary Issue- Section 55 of the *Act*

Section 55 of the *Act* states that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if:

- the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

While I have dismissed the tenant's application, neither party entered a copy of the One Month Notice into evidence and so I cannot determine if the One Month Notice complies with section 52 of the *Act*. Since the requirements of section 55 have not been met, I decline to grant the landlord and Order of Possession pursuant to section 55 of the *Act*.

Conclusion

I dismiss the tenant's application to recover the \$100.00 filing fee without leave to reapply.

The remainder of the tenant's application is dismissed with 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: December 20, 2018

Residential Tenancy Branch