Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDCL-S, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* ("*Act*"), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an order of possession for cause, pursuant to section 56;
- a monetary order for compensation for damage or loss under the *Act, Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 58 minutes. The landlord's agent ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he was the property manager for the landlord named in this application and that he had permission to speak on the landlord's behalf, as an agent.

Preliminary Issue – Service of Landlord's Application

The landlord stated that the tenant was served with a copy of the landlord's application for dispute resolution hearing package in person by the landlord named in this application. He said that the landlord named in this application, was not available to testify to confirm service. The landlord said that he did not witness this service. He initially indicated the service was completed on November 3, 2018. When I asked him how this was possible when the landlord's application was filed on November 18, 2018, he then said it was served on November 18, 2018. When I notified him that the notice of hearing was dated for November 20, 2018, he then consulted his notes and said it was served three days after filing, so it was November 21, 2018.

When I asked why the landlord's evidence changed, he said that he was not having a good day. When I asked him what documents were served to the tenant, he said it was the notice of hearing and the application. When I asked him if the landlord's written evidence was served to the tenant, he said that he did not know what written evidence was. When I explained the meaning of written evidence he said that he was not sure what documents were served because he did not have all of his documents in front of him.

The landlord said that he did not bring all of his paperwork with him to the Residential Tenancy Branch ("RTB") office, where he was calling using his own phone, because he thought that he would get a copy of his application and all of his documents from the RTB. He said that he attended a hearing at the RTB 10 years ago and it was in person so the rules were different. I notified him that this hearing was over the phone, as he had called in using his notice of hearing, which indicated it was a telephone hearing.

I find that the landlord provided confusing evidence regarding service of this application, changing his testimony regarding three different dates, two of which were prior to the notice of hearing date, which was November 20, 2018. The landlord changed his testimony when I notified him that the application was filed on November 18, 2018 and the notice of hearing was dated for November 20, 2018. The landlord did not witness the service and the landlord named in this application, who apparently served the tenant, was not present to confirm the exact date and method of service.

Accordingly, I find that the landlord failed to prove service in accordance with section 89 of the *Act* and the tenant was not served with the landlord's application. The landlord's entire application, except for the filing fee, is dismissed with leave to reapply.

Preliminary Issue – Inappropriate Behaviour by the Landlord during the Hearing

At the beginning of the hearing, I asked the landlord whether he was pursuing his application because he notified me that the tenant had vacated the rental unit on December 24, 2018. He said that he did not require an order of possession because the landlord got the rental unit keys back and took back possession of the unit. At the end of the hearing, the landlord said that he was "99% sure" that the tenant would not return to the rental unit but he wanted an order of possession because he wanted to do everything properly and formally. He said that he wanted to recover his $200.00 professional property management fees and the $100.00 application filing fee. He later withdrew the $200.00 claim but then indicated that he was seeking it.

When I asked why he required an order of possession when the landlord had possession of the rental unit and he did not believe the tenant would return, the landlord became upset and angry towards me. He started yelling at me repeatedly, despite my warnings that this was inappropriate behaviour. When I asked the landlord to calm down and stop yelling or I would have to end the conference, he continued yelling. He said that he "had to yell" at me and that he had "fire" in him. When I notified him that I was speaking calmly and not yelling at him, he continued to yell. He said that he was upset that I was "not being friendly" towards him and he did not like the fact that I was asking him questions about the landlord's application and the tenancy.

The landlord asked for my name after I had already provided it to him at the beginning of the hearing, so I repeated it for him again with the spelling. I notified him that my name would also be contained on the written decision that would be provided to him after the hearing was over.

Throughout the hearing, the landlord claimed that he wanted to withdraw his application and "forget it." He said that he had a future hearing to attend, regarding an order of possession and a monetary order for unpaid rent, and he would deal with that later. He then claimed that he wanted to pursue his application. The landlord changed his mind about this a number of times during the hearing.

When I notified him that he would have to justify the reasons on the landlord's 1 Month Notice to End Tenancy for Cause ("1 Month Notice") and confirm information on the tenancy agreement, in order for me to make an informed decision about the landlord's application, the landlord said he would. When I asked him relevant questions about his application, the landlord became upset because he did not have the 1 Month Notice or the tenancy agreement in front of him during the hearing. I was required to read out the three reasons on the 1 Month Notice to the landlord because he did not have a copy in front of him during the hearing. He said that he did not know there were three reasons checked off on the notice. He said that he was not prepared for the hearing and it was a lesson learned. The landlord was upset throughout the hearing, when I asked him questions about the tenancy. However, I allowed the landlord to attend the entire hearing, despite his repeated yelling towards me, in order to present his application.

For the landlord's information, rule 6.10 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* states the following:

> *6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing*

> *Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.*

I caution the landlord not to engage in the same rude, inappropriate and disruptive behaviour at any future hearings at the RTB, as this behaviour will not be tolerated and he may be excluded from future hearings. In that event, a decision will be made in the absence of the landlord.

Conclusion

The landlord's application to recover the $100.00 filing fee is dismissed without leave to reapply.

The remainder of the landlord's application is dismissed with leave to reapply. I make no findings on the merits of the application. 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: January 04, 2019

Residential Tenancy Branch