



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, OPB

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Applicants on January 28, 2019 (the "Application"). The Applicants sought an Order of Possession based on a vacate clause in a tenancy agreement. The Applicants also sought reimbursement for the filing fee.

The Representative appeared at the hearing for the Applicants. Nobody appeared at the hearing for the Respondent. I explained the hearing process to the Representative who did not have questions when asked. The Representative provided affirmed testimony.

The Applicants had submitted evidence prior to the hearing. The Respondent had not submitted evidence. I addressed service of the hearing package and Applicants' evidence.

The Representative testified that the hearing package and some evidence (evidence 01 to 06) were sent by registered mail to the rental unit on January 31, 2019. He provided Tracking Number 1 for this package. I looked this Tracking Number up on the Canada Post website which shows the package was delivered and signed for February 26, 2019. The signatory name on the delivery confirmation is the initials of the Respondent and there is a signature shown.

The Representative testified that the hearing package and some evidence were also sent to the Respondent's parents' house. He said he was pretty sure the Respondent lives there but was not certain. He provided Tracking Number 2 for this package.

The Representative testified that the remainder of the evidence (evidence 07 to 10) was sent by registered mail to the Respondent twice. He provided Tracking Number 3 and 4

in relation to these packages. He was not sure which package was sent where between the rental unit and Respondent's parents' house.

I looked up Tracking Number 3 on the Canada Post website which shows the package was unclaimed and returned to the sender.

I looked up Tracking Number 4 on the Canada Post website which shows the recipient is not located at the address provided and therefore the package is being returned to the sender.

Based on the undisputed testimony of the Representative, I accept that the hearing package and evidence 01 to 06 were sent by registered mail to the rental unit on January 31, 2019. Based on the Canada Post website information, I accept that the package was delivered to the Respondent and signed for by her on February 26, 2019.

I am not satisfied the method of service complies with section 88 and 89(2) of the *Residential Tenancy Act* (the "*Act*") as I am not satisfied the rental unit is the residence of the Respondent and it is not a forwarding address provided by the Respondent. However, I find the package was sufficiently served for the purposes of the *Act* pursuant to section 71(2)(c) of the *Act* given the Respondent signed for the package and therefore I have evidence that the Respondent in fact received the package. I also find that the package was sent and delivered in sufficient time to allow the Respondent to prepare for, and appear at, the hearing.

I am not satisfied that the packages with evidence 07 to 10 were sufficiently served. The Representative was not able to tell me which package was sent where. Neither package was picked up and signed for by the Respondent. One of the packages was returned as the Respondent was not located at that address. The Representative was not sure that the Respondent lived at her parents' house and was not sure that she was staying at the rental unit. In these circumstances, I am not satisfied the packages were served in accordance with section 88 of the *Act* as I am not satisfied they were sent to the Respondent's residence or forwarding address. I decline to deem them sufficiently served under section 71(2)(c) of the *Act* as I have no evidence that the Respondent in fact received them and Canada Post indicates that the Respondent did not receive them.

Given I am not satisfied of service of evidence 07 to 10, I exclude this evidence and have not considered it.

Given I was satisfied of service of the hearing package, I proceeded with the hearing in the absence of the Respondent. The Representative was given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all admissible documentary evidence and oral testimony of the Representative. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Are the Applicants entitled to an Order of Possession?
2. Are the Applicants entitled to reimbursement for the filing fee?

Background and Evidence

The Representative advised that the Respondent is not living at the rental unit but did not know if the Respondent was staying there as she accepted registered mail delivered to the rental unit. He advised that the Respondent still has access to the rental unit.

The Representative took the position that the Respondent is not a tenant, and has never been a tenant, of the rental unit. He testified that the Respondent has only ever been a guest in the rental unit. He referred to a video submitted as evidence which I understand to be in the evidence 01 to 06 package given the numbering on the file names.

The Representative confirmed the history of this matter as set out in the Notice of Civil Claim which states the following. In September of 2017, the Representative allowed the Respondent to stay at the rental unit as a guest while he was out of the country. The Representative did this without the permission of the Applicants. The Respondent confirmed on video that she understood she was there temporarily as a guest only. In October of 2017, the Respondent was removed from the rental unit by police at the request of the Representative on behalf of the Applicants. The Respondent had not paid rent and there was no tenancy agreement in place. In January of 2018, the Representative and Respondent re-commenced a romantic relationship and the Representative allowed the Respondent to reside at the rental unit as a guest. The relationship ended and the Respondent was told to leave the rental unit which she did in May of 2018. The Representative and Respondent again re-commenced their relationship in July of 2018 at which time the Respondent was given a fob to access the rental unit to send mail to the Representative who was out of the country. In September of 2018, the relationship between the Representative and Respondent again ended.

The Applicants submitted the following admissible evidence:

- A video of the Respondent acknowledging that she is a guest at the rental unit and lives at a different address
- A decision from a prior arbitration between Applicant M.M. and the Representative in relation to obtaining an Order of Possession for the rental unit
- A text from the Respondent dated December 21, 2018 stating she has not lived at the rental unit for two months

Analysis

I acknowledge that the decision from a prior arbitration states that the Respondent and the Representative entered into a verbal tenancy agreement and that the Respondent is a tenant in relation to the rental unit. However, I do not find that I am bound by this decision or that the issue of whether the Respondent is a tenant is res judicata.

The prior hearing was between Applicant M.M. and the Representative. It did not involve the Respondent. The Respondent was not notified of the hearing and did not appear at the hearing. It would be unfair, based on the principles of natural justice, to decide that the matter of whether the Respondent is a tenant in relation to the rental unit is res judicata when the issue before the prior Arbitrator was an alleged tenancy between Applicant M.M. and the Representative. The hearing was convened to deal with issues raised by the Representative as tenant, not to deal with whether the Respondent was a tenant in relation to the Representative or the Applicants. In my view, neither the Applicants, Representative nor Respondent were given a sufficient opportunity to prepare for, and address, the issue of whether the Respondent is a tenant in relation to the rental unit at the prior hearing.

At this hearing, I was satisfied the Respondent was served with the hearing package and thus aware of the proceedings. The Respondent chose not to attend the hearing or submit evidence for the hearing. The Representative did appear at the hearing for the Applicants and the Applicants submitted evidence. The Representative testified that the Respondent is not, and has never been, a tenant in relation to the rental unit. The Applicants submitted evidence supporting their position that the Respondent was only a guest at the rental unit. The Applicants also submitted evidence that the Respondent no longer lives at the rental unit.

Based on the undisputed testimony of the Representative, I accept that the Respondent is not, and never was, a tenant in relation to the rental unit. I find this given that the

Representative lives at the rental unit, the Representative and Respondent were in a relationship and the Representative allowed the Respondent to stay at the rental unit as a guest. The Representative did not have the permission of the Applicants to allow the Respondent to stay which indicates that the Representative was not acting as agent for the Applicants in this regard. The Respondent never paid rent. In these circumstances, I accept that the Respondent was not a tenant. This finding is supported by the video evidence and to some extent by the text message indicating the Respondent no longer lives at the rental unit. The Respondent did not appear at the hearing to provide testimony stating otherwise nor did the Respondent submit evidence demonstrating that she is a tenant in relation to the rental unit.

In the circumstances, I find the Respondent is not a tenant in relation to the rental unit. Therefore, I have no jurisdiction to decide a dispute between the Applicants and Respondent as the jurisdiction of the RTB only extends to tenancy agreements between landlords and tenants.

The Application is dismissed without leave to re-apply.

Conclusion

I find the Respondent is not a tenant in relation to the rental unit. I have no jurisdiction to decide a dispute between the Applicants and Respondent. The Application is dismissed without leave to re-apply.

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: March 14, 2019

Residential Tenancy Branch