



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL, MNRL, OPR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on May 15, 2019 (the "Application"). The Landlord sought an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The Landlord also sought compensation for monetary loss or other money owed, to recover unpaid rent and reimbursement for the filing fee.

The Landlord appeared at the hearing.

J.T. appeared at the hearing for the Tenant. The Tenant was not on the line with J.T. I asked J.T. what his relationship to the Tenant is. He said he is the person living in the rental unit who was served with the hearing documents. He said he did live with the Tenant but that the Tenant no longer lives at the rental unit.

The Landlord took the position J.T. was a guest of the Tenant's and is not himself a tenant. The Landlord said J.T. is not on the tenancy agreement.

I heard from the parties further on whether J.T. is a tenant or occupant of the rental unit.

The Landlord advised as follows in relation to the tenancy agreement for the rental unit. There is a written tenancy agreement. The Tenant is the only tenant on the agreement. The tenancy started April 01, 2017.

The Landlord said J.T. is a friend of the Tenant's and was her guest. He said he did not want J.T. on the tenancy agreement or as a tenant. He did not know when J.T. moved into the rental unit. The Landlord testified that the Tenant paid the rent but not for May or June. The Landlord said he has not accepted rent from J.T.

The Landlord said he has not received written notice from the Tenant ending the tenancy but that he is aware she closed her utilities account April 30, 2019. He said it sounds like the Tenant has vacated. The Landlord said the Tenant told him J.T. was vacating June 01, 2019.

J.T. advised as follows. He moved into the rental unit March 24, 2017 and has been paying the rent almost every month since. He has paperwork signed by the Landlord. His cheques have been cashed by the Landlord and his agents. The tenancy agreement originally only named the Tenant.

J.T. further advised as follows. There is a written tenancy agreement in relation to the rental unit with him named as a tenant. It is between the Landlord's caretaker and himself with a start date of June 24, 2018. There is no term stated. Rent is \$900.00 in the agreement but is now \$922.50. The agreement is signed by the caretaker but not him.

J.T. said the Tenant vacated the rental unit June 20, 2018. He said she came back at some point and lived there until April 20, 2019.

The Landlord denied that J.T. has ever been a tenant in relation to the rental unit.

Neither party submitted any evidence for this hearing.

In relation to appearing for the Tenant, J.T. originally said he had not had any correspondence with the Tenant about this hearing. J.T. subsequently changed his position and said the Tenant knew he was calling into the hearing. J.T. then changed his position for a second time stating that he told the Tenant he was going to call into the hearing but got no response from her. Nothing had been submitted to me showing J.T. had authority to act for the Tenant at the hearing. Given this, and given the conflicting statements made by J.T., I found J.T. did not have authority to appear for the Tenant at the hearing.

I told the parties I would not decide whether J.T. is a tenant or occupant in relation to the rental unit given neither party has submitted any evidence supporting their position and this is not the issue raised in the Application. I told J.T. I was not satisfied he had authority to appear for the Tenant and therefore he was to exit the conference call. J.T. did exit the conference call.

The Landlord continued to seek an Order of Possession for the rental unit. I explained the hearing process to the Landlord who did not have questions about the process when asked. The Landlord provided affirmed testimony.

Neither the Landlord nor the Tenant had submitted evidence prior to the hearing. I addressed service of the hearing package.

The Landlord testified that he gave the hearing package to J.T. at the rental unit on May 16, 2019. He said he did not see the Tenant there at the time. He said he does not know if the Tenant lived at the rental unit at the time. The Landlord testified that the last correspondence he had with the Tenant was in April. He said he thought J.T. might know where the Tenant is or that the Tenant might be at the rental unit.

Section 89 of the *Residential Tenancy Act* (the “Act”) sets out the requirements for service of an application for dispute resolution and states:

89 (1) An application for dispute resolution...must be given in one of the following ways:

(a) by leaving a copy with the person;

...

(c) by sending a copy by registered mail to the address at which the person resides...

(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)...

(2) An application by a landlord under section 55 [order of possession for the landlord]...must be given to the tenant in one of the following ways:

(a) by leaving a copy with the tenant;

(b) by sending a copy by registered mail to the address at which the tenant resides;

(c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;

(d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;

(e) as ordered by the director under section 71 (1)...

[emphasis added]

The Rules of Procedure (the "Rules") state the following:

3.5 Proof of service required at the dispute resolution hearing

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...as required by the Act and these Rules...

I am not satisfied the Tenant was served with the hearing package in accordance with section 89 of the Act. I am not satisfied the Tenant resided at the rental unit on May 16, 2019 given the following.

The Landlord said he is aware the Tenant closed her utilities account April 30, 2019 and acknowledged that this seems to show the Tenant had vacated the rental unit. I find this seems to show the Tenant vacated prior to May.

The Landlord said the Tenant was paying rent but did not do so for May or June. This supports that the Tenant vacated prior to May.

J.T. said the Tenant vacated the rental unit in April. I did not find J.T. to be reliable or credible given his changing position on whether he had corresponded with the Tenant about this hearing. However, his statement accords with the statements of the Landlord that seem to indicate the Tenant vacated prior to May.

The Landlord did not see the Tenant at the rental unit when he served the hearing package on J.T. The Landlord acknowledged that he does not know if the Tenant resided at the rental unit when the hearing package was served. Further, the Landlord said his last correspondence with the Tenant was in April.

The evidence seems to indicate the Tenant vacated the rental unit prior to May when the hearing package was served. Therefore, I am not satisfied the Tenant resided at the rental unit when the hearing package was served on J.T. I am not satisfied the Tenant was served with the hearing package in accordance with section 89 of the *Act*.

I have no evidence before me that the Tenant in fact received the hearing package and J.T. said at one point that he had not corresponded with the Tenant about the hearing package.

The Tenant did not appear at the hearing or have someone attend on her behalf.

In the circumstances, I am not satisfied of service and therefore dismiss the Application with leave to re-apply. This does not extend any time limits set out in the *Act*.

Conclusion

The Application is dismissed with leave to re-apply. This does not extend any time limits set out in 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: June 28, 2019

Residential Tenancy Branch