



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL OPRM-DR

Introduction

On June 10, 2019, an Adjudicator appointed pursuant to the *Residential Tenancy Act* (the *Act*) adjourned the landlord's direct request application for an *ex parte* dispute resolution hearing to a participatory hearing. The Interim Decision of the adjourned *ex parte* dispute resolution hearing explained that the landlord failed to serve the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent through an acceptable method of service and therefore the matter could not be addressed through the direct request process.

Through the avenue of a participatory hearing, I have been delegated authority under the *Act* to consider the landlord's application for the following:

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55 of the *Act*;
- a Monetary Order for unpaid rent pursuant to section 67 of the *Act*; and
- recovery of the filing fee from the tenant pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord confirmed the email address provided in his application as the correct email address to receive the written decision from this hearing.

The tenant stated that she did not want to confirm her email or contact information during the hearing as she did not want it shared with the landlord. The tenant confirmed that the email address provided to the Residential Tenancy Branch for an application for

dispute resolution filed by the tenant could be used. I cautioned the tenant that it is her responsibility to contact the Residential Tenancy Branch and provide them with her correct and current contact information in order to receive a copy of this decision.

Preliminary Issue – Service of Documents

The landlord testified that he had served the tenant with the notice of this reconvened hearing, along with the Interim Decision dated June 10, 2019, and accompanying documents provided by the Residential Tenancy Branch by Canada Post registered mail on June 12, 2019 to the rental unit address. The landlord submitted a Canada Post registered mail tracking report into evidence in support of his testimony. I note that the tracking report indicates that the registered mail package was “unclaimed” and returned to sender.

The tenant testified that she believed she was attending the hearing as an applicant in a matter for dispute she filed against another landlord. The tenant provided the file number for her application for dispute resolution, which I noted was different than the file number for the current matter. I accessed the Residential Tenancy Branch hearing schedule to confirm that the tenant’s application was against another party and was scheduled several months from now.

The tenant testified that she had never received the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent, and that she had never received notice of this hearing. She testified that the only notification she had received about the hearing was through the Residential Tenancy Branch and she believed that this hearing was for another matter.

The tenant testified that she moved out of the landlord’s rental unit on May 10, 2019 and lived with friends until she could move into her new rental unit on May 20, 2019. The tenant testified that she left the rental unit keys inside the rental unit when she moved out.

The landlord testified that he had never attended at the rental unit recently to ascertain whether or not the tenant was still residing in the rental unit.

Given that the tenant has confirmed she no longer resided in the rental unit as of May 10, 2019, the landlord’s application for an Order of Possession is dismissed without leave to reapply as this claim is now moot.

As the tenant testified that she moved out on May 10, 2019, and the landlord testified that he served the tenant with the notice of this hearing on June 12, 2019, I find that the landlord did not serve the tenant with the notice of this hearing “to the address at which the person resides” as required by section 89 of the *Act*.

Therefore, landlord’s claim for monetary compensation for unpaid rent is dismissed with leave to reapply due to an issue with service. The landlord is at liberty to reapply for this claim against the tenant.

As the landlord was not successful in his application he must bear the costs of his filing fee. Therefore, the landlord’s claim to recover the filing fee from the tenant is dismissed without leave to reapply.

Conclusion

The landlord’s claim for an Order of Possession is dismissed as it is moot given the tenant testified that she has moved out of the rental unit.

The landlord’s claim for monetary compensation is dismissed with leave to reapply due to a service of documents issue.

The landlord’s claim to recover the cost of the filing fee is dismissed.

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: July 22, 2019

Residential Tenancy Branch