



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, OPR, MNRL –S, FFT, FFL

Introduction

This hearing was scheduled for 11:00 a.m. on this date, via teleconference call, to deal with cross applications. The tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and orders for the landlord to comply with the Act, regulations or tenancy agreement. The landlord applied for an Order of Possession and Monetary Order for unpaid rent and authorization to retain the security deposit.

The landlord appeared at the hearing; however, there was no appearance on part of the tenant(s). I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only persons to have called into this teleconference.

Preliminary and Procedural Matters

The landlord stated the tenants vacated the property in early August 2019.

Since the tenants did not appear for their hearing and I heard the tenants have already vacated, I dismissed the tenant's application without leave. Further, an Order of Possession is no longer required and I do not provide one to the landlord with this decision. Rather, the only issue that remains outstanding is the landlord's monetary claim.

It should also be noted that the landlord was extremely difficult to hear and understand during the hearing. Her telephone connection frequently cut out so that I was only able to hear portions of words and only some of the time. After repeatedly asking the landlord to repeat her statements I was able to glean the following information: the landlord stated she was calling from China on a cell phone and that she had already done her best to find the best telephone connection for this teleconference call. The

landlord requested the hearing be rescheduled to a date after she returns to Canada. I considered adjourning the hearing to a later date; however, I deny the request as I am unsatisfied the tenants were duly served with the landlord's hearing documents, and I am unsatisfied that they would be served with notification of the landlord's adjourned hearing, for reasons set out below.

The landlord testified that she served one of the named tenants, referred to by initials JRM, with the proceeding package in person on July 16, 2019. The landlord testified that she sent her evidence to the tenants via email on August 6, 2019 and that she did not receive a reply to her email. The landlord stated the tenants have likely left the country and have likely returned to Ireland since that is where their passports were issued. The landlord stated she does not know how else to serve the tenants as they did not provide her with a forwarding address.

Evidence must be served in accordance with section 88 of the Act and email is not an acceptable method of service under section 88. Nor, was there any indication the tenants received the emailed evidence and I was not prepared to deem the tenants sufficiently served. Therefore, I did not admit the landlord's documentary evidence.

In the landlord's case, the landlord had requested a Monetary Order for \$11,000.00 in making her Application and then during the hearing the landlord indicated she is seeking additional damages and loss against the tenants; however, the landlord has not served the tenants with an Amendment. I am not prepared to make an award, and especially not an award for such a large amount, without corroborating evidence. Nor, was I going to permit an amendment to increase the claim where such an amendment has not been served upon the respondents.

Having heard the tenants have vacated the property and the landlord does not know how to serve the tenants, I was of the view that adjourning the hearing would not likely result in resolution of this dispute since the landlord is unable to serve the tenants with her evidence at this point and successful delivery of a Notice of Adjourned Hearing is also doubtful.

Considering the tenants did not appear for the hearing, rather than dismiss the landlord's claim outright, **I dismiss the landlord's claim with leave to reapply.**

As further information for consideration, a landlord may hold a security deposit until the tenant gives the landlord a forwarding address and the tenant has one year from the time the tenancy ended to provide the landlord a forwarding address. If the tenant does

not provide a forwarding address within one year, the landlord may retain the security deposit. The Act also provides that an applicant may seek a “substituted service order” in cases where a party cannot be served in one of the ways required under the Act. The landlord is encouraged to make enquiries with the Residential Tenancy Branch with respect to seeking a substituted service order if she wishes to pursue the claims against the tenants again in the absence of their forwarding address or current address of residence.

Conclusion

The tenants’ application is dismissed without leave to reapply.

The landlord’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: August 23, 2019

Residential Tenancy Branch