



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AMORE PROPERTIES INC. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPT, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an Order of Possession of the rental unit pursuant to section 54; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Preliminary Matter - Teleconference Hearing

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 12:05 p.m. in order to enable the landlord or their representative to call into this teleconference hearing scheduled for 11:00 a.m. The tenant's representative (the tenant) attended the hearing at 11:00 a. m. and was given an opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant and I were the only ones who had called into this teleconference.

During the first twelve minutes of this hearing, the tenant was given an opportunity to explain how the landlord was served with notice of this dispute resolution hearing. After providing this explanation and hearing my concerns as to the method used to serve this dispute resolution hearing package to the landlord, as set out below, the tenant appeared to have been disconnected from this teleconference hearing such that I could no longer hear the tenant. In the event that the tenant could still hear me, I advised that they could call back into the teleconference using the same contact information. After waiting a few minutes, I disconnected from the hearing myself. to seek another line

which might enable me to communicate with the tenant. When I reconnected a few minutes later, I was unable to connect with the tenant and sought the assistance of the TELUS operator. When this too proved unsuccessful, I disconnected again. When I reconnected at approximately 11:22 a.m., the TELUS teleconference system indicated that I was the only person still connected with this hearing. I remained on this line until 12:05 p.m., in the event that the tenant wished to call back into the teleconference. When no one else joined the teleconference, I terminated this hearing.

Preliminary Matter - Service of Dispute Resolution Hearing Package

As the tenant's written evidence and sworn testimony were sufficient to enable me to make a decision with respect to the tenant's service of the dispute resolution hearing package, I am able to make a decision on the basis of the information provided during the period when the tenant was connected with this hearing.

The tenant gave sworn testimony supported by written evidence that they sent the dispute resolution hearing package to the landlord on August 23, 2019. They said that they sent this package to the address provided by the landlord's agent (the agent) who signed the July 3, 2019 Residential Tenancy Agreement (the Agreement) with the tenant. On the standard Agreement, the agent had noted that the address listed as that to be used for serving the landlord with tenancy related documents was that of the agent, identifying the agent's name beside that address.

The tenant's application identified only the landlord as the Respondent in this application. In the written evidence supplied by the tenant, there are references to the landlord as being in a foreign country. All direct interaction with the tenant was through the agent as the landlord's representative. Although the tenant used the address provided to the tenant in the Agreement for service of the dispute resolution hearing package, the tenant said that this registered mail was addressed to the landlord with no mention of the agent's name on the registered mail. At the hearing, I advised the agent that a registered letter sent to the landlord at the agent's address would not enable the agent to retrieve that letter containing the dispute resolution hearing package from Canada Post.

While we waited to see if the landlord or the agent would call into this teleconference hearing, I checked with Canada Post's Online Tracking System to see if the package had been delivered, as the tenant reported that they had not checked this system. I advised the tenant that the Online Tracking System revealed that this package has not

yet been delivered and that a card was left for the recipient (the landlord) at the agent's address on August 26, 2019. Although the tenant said that they had called the agent to let them know that the dispute resolution hearing package had been sent to them, it appeared that a registered letter sent to the landlord, who may very well still be residing outside the country, could not be retrieved by the agent.

Section 89 of the *Act* establishes the following Special Rules for certain documents, which include an application for dispute resolution:

89(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (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) [director's orders: delivery and service of document]...*

Section 15 of Residential Tenancy Guideline 12 on Service Provisions reads in part as follows:

...Proof of service by Registered Mail should include the original Canada Post Registered Mail receipt containing the date of service, the address of service, and that the address of service was the person's residence at the time of service, or the landlord's place of conducting business as a landlord at the time of service as well as a copy of the printed tracking report...

While I accept that the dispute resolution hearing package was sent to the landlord's place of conducting business as established in the Agreement, that address was clearly identified as that of the agent and not the address for the landlord. With no provision of the agent's name on the envelope for the registered letter containing the dispute resolution hearing package, that package would be inaccessible to the agent for retrieval from Canada Post.

As I am not satisfied that the tenant has demonstrated that the landlord or their agent were properly served with copies of the tenant's application for dispute resolution, which would have contained the details on how to connect with this teleconference hearing, I dismiss this application with leave to reapply. I do so as the tenant has not established that these documents were served in a way that they could be accessed pursuant to section 89 of the *Act*.

Conclusion

I dismiss the tenant's application with leave to reapply. Leave to reapply does not extend any deadlines established pursuant to the *Act*, including the deadlines for applying for dispute resolution or for returning security deposits at the end of a tenancy.

In the event that the tenant chooses to reapply and the tenant has only the agent's mailing address, the tenant may wish to consider either identifying the agent as the Respondent or adding the agent as a Co-Respondent to their application.

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: September 13, 2019

Residential Tenancy Branch