



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, MNDCT, OLC, OT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on October 22, 2019 (the "Application"). The Tenant applied as follows:

- To dispute a One Month Notice for Cause;
- To suspend or set conditions on the Landlord's right to enter the rental unit; and
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement.

The Tenant filed an amendment dated October 23, 2019 to remove section E from the original application and to update the rental unit address.

The Tenant filed an amendment dated October 25, 2019 adding a monetary claim for \$120.00 as compensation for services that were cut off October 15, 2019 and compensation for unlawful entry.

The Tenant appeared at the hearing with a witness who was outside of the room until required. The Landlord appeared at the hearing with a witness who was outside of the room until required.

The Tenant advised at the outset that she vacated the rental unit November 20, 2019. The Landlord agreed with this. Given this, the Tenant withdrew the following requests:

- To dispute a One Month Notice for Cause;
- To suspend or set conditions on the Landlord's right to enter the rental unit; and

- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement.

This only left the amendment dated October 25, 2019 adding a monetary claim for \$120.00 which the Tenant wanted to continue with.

I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Landlord confirmed receipt of the hearing package, original Application and amendment dated October 23, 2019. The Landlord testified that she did not receive the amendment dated October 25, 2019. The Landlord testified that she received some of the Tenant's evidence but not all.

At first, the Tenant testified that she thought the amendment dated October 25, 2019 was included in the package sent to the Landlord. The Tenant testified that she thought all of the evidence was in the package other than two pages of the evidence submitted. The Tenant acknowledged that she only sent one package to the Landlord and testified that it was sent October 23, 2019. I asked the Tenant how she would have included the amendment dated October 25, 2019 and she said she "didn't then".

I asked the Landlord for her position about proceeding with the hearing in relation to the amendment dated October 25, 2019 in the circumstances. The Landlord's position was not clear to me.

Rule 4.6 of the Rules of Procedure states:

As soon as possible, copies of the Amendment to an Application for Dispute Resolution form and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by section 89 of the Residential Tenancy Act...and these Rules of Procedure.

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for

Dispute Resolution form and supporting evidence as required by the Act and these Rules of Procedure.

In any event, a copy of the amended application and supporting evidence should be served on the respondents as soon as possible and must be received by the respondent(s) not less than 14 days before the hearing.

[emphasis added]

Here, I was not satisfied the amendment dated October 25, 2019 (the “Amendment”) was served on the Landlord for the following reasons. The Landlord testified that she did not receive the Amendment. The Tenant testified that she sent one package to the Landlord on October 23, 2019. In the absence of further evidence showing the Amendment was served, I find it unlikely that the Amendment was in the package sent October 23, 2019 given the dates involved.

Given I was not satisfied the Amendment was served in accordance with the Rules of Procedure, I determined that the Amendment should be dismissed with leave to re-apply. I did not find the Landlord’s position on whether she was prepared to proceed in relation to the Amendment clear; however, I did not understand the Landlord to say she was prepared to proceed despite the service issue. Further, based on the comments of the Landlord when asked about the issue, I was not satisfied the Landlord was prepared to proceed in relation to the Amendment. I found it would be unfair to the Landlord to proceed in relation to the Amendment when it raised a new issue and was not served on the Landlord as the Landlord did not have notice that this issue would be addressed at the hearing. I also found that there were issues of service in relation to the Tenant’s evidence.

In the circumstances, the issues raised in the Amendment are dismissed with leave to re-apply. This does not extend any time limits set out in the *Residential Tenancy Act* (the “Act”).

Conclusion

The issues raised in the Amendment are 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: November 25, 2019

Residential Tenancy Branch