



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR LRE OLC PSF RP MNDCT

Introduction

This hearing was originally scheduled for today's date, via teleconference call, to deal with a tenant's application made on November 6, 2019 to: suspend or set conditions on the landlord's right to enter the rental unit; orders for the landlord to comply with the Act, regulations or tenancy agreement; orders to provide services or facilities required by law or the tenancy agreement; and, orders for repairs. A hearing package was generated on November 13, 2019 for the applicant to serve to the respondent. On November 15, 2019 the applicant submitted an Amendment to an Application for Dispute Resolution to dispute a 10 Day Notice to End Tenancy for Unpaid Rent. On November 26, 2019 the applicant submitted a second Amendment to an Application for Dispute Resolution to seek monetary compensation of \$1,870.17.

Both parties appeared or were represented at the hearing and had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure. It should be noted, however, that the respondent's telephone connection was very poor and many times it was very difficult to hear what she was saying. The applicant also joined the teleconference call seven minutes late and stated that one of the telephone numbers provided on the Notice of Dispute Resolution Proceeding was not connecting her to the teleconference call system.

I proceeded to explore service of hearing documents upon each other. Below, I have summarized what I heard.

The applicant testified that the original hearing package and the first amendment were posted to the door of the subject property on November 19, 2019 when the landlord refused to accept the documents in her hand. The landlord acknowledged finding the documents posted to the door of the subject property on November 19, 2019.

The applicant testified that the original hearing package and the first Amendment were also sent to the respondent by registered mail on November 15, 2019 using two different addresses. The respondent acknowledged receiving one package via regular mail. I asked the applicant to provide me with the registered mail tracking number(s). She provided one tracking number and a search of the tracking number indicated a package was sent on November 15, 2019 via Xpresspost, that the package was placed in a community mailbox, but that no signature was obtained.

The applicant testified that she had a person serve the landlord with her second Amendment, in person, but she could not recall the date this was done. The respondent acknowledged receiving the second Amendment by personal service on November 28, 2019.

Section 89(1) of the Act provides for the ways in which the applicant was required to serve her Application for Dispute Resolution and Amendments. Posting documents on the door is not one of the permissible ways to serve the Application for Dispute Resolution before me or an Amendment. Also, it would appear the documents sent in the mail were not sent registered mail since the mail was left in a community mail box and without a signature. Residential Tenancy Branch Policy Guideline 12: *Service provisions*, provides that a mail service offered by Canada Post that requires a signature of the recipient is considered registered mail. Canada Post's Xpresspost service may be acceptable so long as the package requires a signature upon delivery but one was not obtained in this case.

Despite the improper service described above, as I am permitted to do under section 71 of the Act, I deemed the respondent sufficiently served with the Application for Dispute Resolution and the first Amendment as she did receive the documents and there was sufficient time to prepare a response. Therefore, I indicated I was prepared to deal with the remedies sought in the original Application for Dispute Resolution and the first Amendment.

As for service of the second Amendment, whereby the respondent requested monetary compensation, I declined to amend the Application for Dispute Resolution to deal with the monetary claim for a number of reasons. Firstly, an Amendment must be received no less than 14 clear days before the hearing and the second Amendment was received only 13 clear days before the hearing. Secondly, the monetary claim was not accompanied by sufficient particulars that would describe the basis for making the claim; the amounts specified did not add up to the sum requested; and, the monetary claim was not accompanied by receipts except for one. The applicant acknowledged

that she is still waiting to obtain receipts and her monetary claim is still being determined. As such, I was of the view that the monetary claim may have been submitted pre-maturely. Therefore, I declined to give further consideration to the applicant's monetary claims and the applicant is given leave to reapply for monetary compensation.

The respondent testified that she served her responses to the applicant by regular mail sent to the applicant's service address listed on the Application for Dispute Resolution, on November 28, 2019. The applicant stated she has not received a response but the last time she checked her mailbox was on December 6, 2019. Although regular mail is an acceptable method to serve a response or evidence under section 88 of the Act, the respondent cannot prove the responses were sent or received. As such, I did not admit her documents into evidence.

In proceeding to deal with the original Application for Dispute Resolution and first Amendment, both parties provided consistent testimony that the applicant no longer occupies the subject property and has not occupied it since mid-November 2019. The respondent stated that she has regained possession of the subject property in mid-November 2019. In that circumstance, I was of the view that the remedies sought by the applicant in the original Application for Dispute Resolution and the first Amendment were moot as of the date of this hearing.

The applicant enquired as to her remedies if she is of the position she was unlawfully evicted. I informed the parties that a tenant's remedy in such a circumstance may include seeking an Order of Possession for the rental unit; seeking monetary compensation; and, administrative penalties. I encouraged the parties to familiarize themselves with the *Residential Tenancy Act*, including remedies available to them, by accessing the Residential Tenancy Branch website and speaking with an information Officer.

Since there was not an application for an Order of Possession or a monetary claim that I was prepared to accept, I ended the hearing.

Conclusion

The remedies sought in the original Application for Dispute Resolution and first Amendment were moot as of the date of the hearing. I declined to permit the Application for Dispute Resolution to be amended to deal with a monetary claim and the applicant is at liberty to file an Application for Dispute Resolution to seek monetary compensation or any other applicable remedy.

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: December 12, 2019

Residential Tenancy Branch