



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. The Tenant applied for an order of possession, pursuant to section 54 of the *Residential Tenancy Act* (the "Act"). The participatory hearing was held, via teleconference, on August 25, 2020.

The Landlord and the Tenant both attended the hearing. All parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The Landlord confirmed receipt of the Tenant's application and evidence and did not take issue with the service of those documents.

The Landlord confirmed that he sent his evidence, by registered mail, on August 18, 2020. Given this was an expedited hearing, the Landlord had until 2 days before the hearing to ensure his evidence was served to the applicant. In this case, the Tenant failed to put her correct mailing address as her "address for service" on her Notice of Dispute Resolution Proceeding, which she served to the Landlord. Then, when the Landlord served his evidence to the Tenant's address, as she listed it, it failed to get delivered. I find this was the Tenant's fault for failing to provide her correct address for service and I find that the Landlord did all that could be expected, to send his evidence by registered mail, to the tenant's listed address for service. Pursuant to section 89 and 90 of the Act, I find the Tenant is deemed served with the Landlord's evidence, 5 days after it was sent, on August 23, 2020.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules

of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant explained that she and the Landlord had several weeks of tenancy agreement negotiations in July 2020, and finally they signed the most recent agreement towards the end of July. I note there appears to have been a communication breakdown at a critical time. The tenancy was supposed to start on August 1, 2020. However, the parties failed to coordinate this, for a variety of reasons. The Landlord stated that part of the reason things fell through was because he was suddenly unable to get a hold of the Tenant, and he subsequently found new people to move in, effective August 1, 2020.

During the hearing, I requested for the Landlord to provide evidence to demonstrate that a new tenancy had been started in the rental unit. I provided the Landlord with 48 hours to provide this evidence. Since that time, I note the Landlord provided a bank account statement, showing an electronic fund transfer into his account for the monthly rent amount on August 1, 2020. The Landlord also provided a copy of an email from the current tenants, saying they have moved in. I accept that a new tenancy has commenced, based on the evidence before me.

As stated in the hearing, I am unable to issue an order of possession to the Tenant given that a new tenancy has started, and it is currently inhabited by new renters. I hereby dismiss the Tenant's application for an order of possession. The Tenant is at liberty to apply for monetary compensation for damage or loss under the Act. However, this needs to be applied for under a separate application.

Conclusion

The Tenant's application is dismissed, without leave. The Tenant is at liberty to apply for monetary compensation.

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 27, 2020