



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT

Introduction

This hearing was set to deal with a tenant's application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent. Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I explored service of hearing documents upon each other.

The tenant testified that she served her proceeding package to the landlord in person on September 21, 2020; however, the tenant acknowledged that she did not serve the landlord with the documentation and evidence she had uploaded to the Residential Tenancy Branch. The landlord confirmed receipt of the tenant's proceeding package and that there was no supporting materials or evidence with the proceeding package.

The landlord's wife testified that the landlord's evidence was sent to the tenant via registered mail; however, I determined it was actually a courier service that was used and not registered mail since registered mail is a service provided by Canada Post. The tenant denied receiving a package from the landlord. The landlord's wife testified that they sent the package to the forwarding address provided by the tenant's co-tenant during the move-out inspection and it was delivered, along with a refund cheque for the security deposit, on November 2, 2020. The tenant indicated she was unaware that the landlord's evidence package and refund cheque was sent to her former co-tenant at his forwarding address.

Parties to a dispute are required to serve the other party with the same materials and evidence they provide to the Residential Tenancy Branch. The method of service must be done in a way that complies with section 88 of the Act and deadlines apply.

In this case, the tenant failed to serve the landlord with her evidence, at all, and the landlord's evidence was not served in a manner that complies with section 88 of the Act and it was received late.

Given the parties' failure to serve evidence upon each other as required and neither party was in receipt of the other parties' evidence, I made enquiries with the parties with a view to determining how to proceed.

Both parties confirmed that the rental unit was vacated on October 15, 2020. As such, I found the remedy sought by the tenant to be moot at this point in time and the landlord does not require an Order of Possession. Therefore, I did not hear further submissions with respect to this Application for Dispute Resolution and I dismissed it.

The tenant enquired as to whether this proceeding would determine whether there is rent or the security deposit outstanding. I informed the parties that I would not be making any such determinations as I do not have a monetary claim before me and that where a party seeks monetary compensation from the other party the appropriate course of action would be to file an Application for Dispute Resolution seeking a Monetary Order. Further, the party making the monetary claim has the burden of proof.

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: November 06, 2020

Residential Tenancy Branch