



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, OPC, FFL
CNC, LRE, OLC, FFT

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for an Order of Possession for breach of an agreement; an Order of Possession for cause; and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for an order cancelling a notice to end the tenancy for cause; an order limiting or setting conditions on the landlord's right to enter the rental unit; an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord. Both parties attended the hearing.

At the commencement of the hearing the landlord advised that the tenant has not served the landlord with the Tenant's Application for Dispute Resolution in accordance with the law, and that no evidence has been received from the tenant. The landlord received the Notice of Dispute Resolution, which was hand-delivered to her on November 21, 2020, but no evidence.

The tenant advised that he had a friend deliver the evidence to the landlord on the 21st or 22nd of November, 2020 and that the Tenant's Application for Dispute Resolution was delivered by email, which is disputed by the landlord. I reserved my Decision with respect to service, and the hearing commenced.

The parties each gave affirmed testimony and the landlord also called 1 witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness, and to give submissions.

During the hearing the tenant testified that his agent served the landlord, and that it would have been by email or registered mail, but was served late. The tenant's agent apparently talked to the Residential Tenancy Branch and was advised that wasn't good, but not a big deal.

I have reviewed the automated record which shows that the tenant's application was submitted to the Residential Tenancy Branch on October 28, 2020, and the tenant was

provided an email on November 2, 2020 from the Residential Tenancy Branch with instructions to serve documents on the landlord. It specifically states: "The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent." It also states that no evidence was submitted by the tenant at the time of the application.

The system also shows that on November 16, 2020 the landlord contacted the Residential Tenancy Branch stating that the landlord had not received the Hearing Package from the tenant, and was sent a courtesy copy by email directly from the Residential Tenancy Branch.

I am satisfied that the tenant's agent served the Tenant's Hearing Package to the landlord personally on November 21, 2020, but I am not satisfied that the tenant has provided any evidentiary material to the landlord.

The *Residential Tenancy Act* specifies that an applicant must serve the respondent within 3 days of receipt of the notice of hearing. The *Act* also specifies the methods permitted for service, as follows:

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, 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 documents*].

In this case, the tenant advised that the Hearing Package was served to the landlord by email, which is not a method permitted by the *Act*, and that the evidence was delivered to by a friend on November 21 or 22, 2020. The tenant has not provided any evidence that either the Hearing Package containing the tenant's application or the evidentiary material was served on the landlord.

I am not satisfied that the tenant has established how or when the landlord was served with any documentation, and therefore, I dismiss the tenant's application in its entirety without leave to reapply.

The *Residential Tenancy Act* also specifies that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form.

The landlord has provided a copy of a One Month Notice to End Tenancy For Cause or End of Employment. It is dated October 19, 2020 and contains an effective date of vacancy of November 30, 2020. I find that it is in the approved form and contains information required by the *Act*. Therefore, I grant an Order of Possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee, and I order the landlord to keep that amount from the security deposit held in trust as full recovery.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

I further order the landlord to keep \$100.00 from the security deposit held in trust as full recovery of the filing fee.

This order is final and binding and may be enforced.

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 17, 2020

Residential Tenancy Branch