



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, MNDCT, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

On January 25, 2021 the tenant filed two amendments, one to change the tenant's address for service and the other to add the following claims:

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67; and
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 9:40 a.m. to enable the landlord to call into this teleconference hearing scheduled for 9:30 a.m. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

At the start of the hearing the tenant testified that this tenancy has ended and that he no longer resides at the subject rental property. As this tenancy has ended, I dismiss the tenant's application for:

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47; and
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62

because the issues are no longer applicable.

The tenant testified that he served the landlord with his application for dispute resolution in person the day after he received the service documents from the Residential Tenancy Branch. No proof of service documents were entered into evidence. The tenant entered into evidence a letter from the landlord which states in part:

Rental office has given you a date of hearing....

The tenant testified that this proves that the landlord received his application for dispute resolution.

The tenant testified that he served the landlord with his amendments by sliding them inside the landlord's door. No proof of service documents were entered into evidence.

Section 88 of the *Act* states:

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served 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 ordinary mail or 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 ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;

- (g)by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h)by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i)as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j)by any other means of service provided for in the regulations.

Section 89(1) of the *Act* states:

- 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*];
 - (f)by any other means of service provided for in the regulations.

I find that the landlord may have received the tenant's original application for dispute resolution; however, at the time of this hearing the claim on which the original application was made was no longer relevant because the tenancy ended. I find that the tenant has not proved, on a balance of probabilities that the tenant served the landlord with the amendments which contained the only live issue in this dispute, the tenant's claim for monetary damages. As the tenant has not proved service of the amendments, I dismiss the tenant's claim for a Monetary Order for damage or compensation under the *Act*, with leave to reapply.

Because the tenant was not successful in this application for dispute resolution, I find that the tenant is not entitled to recover the \$100.00 filing fee, pursuant to section 72 of the *Act*.

Conclusion

The tenant's application for:

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72

are dismissed without leave to reapply.

The tenant's application for a Monetary Order for damage or compensation under the *Act*, pursuant to section 67, is dismissed with leave to reapply.

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: March 26, 2021

Residential Tenancy Branch