



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNRL-S, MNDL-S, MNDCL-S, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on March 9, 2021, wherein the Landlord sought the following relief:

- an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities;
- an Order of Possession based on a 1 Month Notice to End Tenancy for Cause;
- monetary compensation from the Tenant in the amount of \$32,350.00;
- authority to retain the Tenant's security deposit; and,
- recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for 11:00 a.m. on June 17, 2021. Only the Landlord, his son, J.M. and S.M. called into the hearing.

As the Tenant failed to call into the hearing, I considered service of the Landlord's Application materials. Initially, the Landlord's son, J.M., testified that an R.C.M.P. officer served the Tenant with Notice of the Hearing, the Landlord's Application, and the evidence in support of the Landlord's Application. When asked to provide the date the service occurred, J.M. was not able to provide this information. J.M. then stated that they personally served the Tenant and an R.C.M.P. officer attended at the Tenant's request. J.M. was not able to provide a date as to when this allegedly occurred.

I explained to the Landlord that I could not proceed with the hearing unless I was satisfied that the Tenant was served with notice of the hearing. At that time, J.M. then stated that they served the Tenant with the Application materials by registered mail. J.M. could not provide any details as to when this package was apparently sent out.

Although there was a registered mail receipt in the materials, the receipt was dated February 26, 2021 and appeared to relate to a package sent to the Landlord, not from the Landlord.

Although I gave the Landlord, J.M. and S.M. 47 minutes in which to determine the date the Tenant was served with Notice of the hearing, they were not able to provide that information.

Rule 3.1 of the *Residential Tenancy Branch Rules of Procedure* provides as follows:

3.1 Documents that must be served

The applicant must, within 3 days of the hearing package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the application for dispute resolution;
- b) the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch;
- c) the dispute resolution proceeding information package provided by the Residential Tenancy Branch;
- d) a detailed calculation of any monetary claim being made;
- e) a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
- f) any other evidence, including evidence submitted to the Residential Tenancy Branch with the application for dispute resolution, in accordance with Rule 2.5 [*Documents that must be submitted with an application for dispute resolution*].

Section 89 of the *Residential Tenancy Act* provides 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*].

I find the Landlord provide insufficient evidence to support a finding that they served the Tenant in accordance with the *Rules* and the *Act*; consequently, I find the Tenant was not given notice of the hearing. One of the Principles of Natural Justice is that a party to a dispute has the right to know the claim against them and an opportunity to attend the hearing and make submissions in defense of the claims made. The *Act* contains specific rules about service in section 89 to ensure that this principle is observed; to proceed without adequate notice to the Tenant would offend this principle and would deny the Tenant a fair opportunity to be heard.

In the hearing before me, the Landlord also sought an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities as well as a 1 Month Notice to End Tenancy for Cause. The parties attended a hearing on March 22, 2021 at which time the Landlord was granted an Order of Possession. As such, this relief was no longer required.

The Landlord's son expressed concerns as to the emotional impact this tenancy has had on him as well as his elderly father. He also accused me of treating him poorly when I informed him that I could not proceed with the hearing until I was satisfied the Tenant was served with notice of the hearing as required by the *Act* and the *Rules*.

While this tenancy has no doubt been difficult, and the Landlord clearly wishes to conclude matters, I am not able to proceed with the hearing without proper notice to the Tenant.

I therefore dismiss the Landlord's Application 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: June 25, 2021

Residential Tenancy Branch