



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Skyline Ltd. (d.b.a. Skyline Living) and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Parties	File No.	Codes:
Tenant	210037747	RP, FFT
Landlord	910040861	OPR, MNRL, FFL

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Tenant filed a claim for:

- an Order for repairs to the unit or property, having contacted the Landlord in writing to make repairs, but they have not been completed; and
- recovery of her \$100.00 application filing fee.

The Landlord filed a claim for:

- an order of possession for unpaid rent, further to having served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent dated May 21, 2021;
- for a monetary order for unpaid rent in the amount of \$5,010.14; and
- recovery of the \$100.00 application filing fee.

The Tenant, and two agents for the Landlord, G.M. and R.P. ("Agents"), appeared at the teleconference hearing and were available to give affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Agents were given the opportunity to provide their evidence orally and respond to the testimony of the other

Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch (“RTB”) Rules of Procedure (“Rules”); however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant said she served the Landlord with her Notice of Hearing documents and evidence by registered mail, shortly after May 13, 2021, the day that she applied for dispute resolution. The Tenant did not have a copy of the Canada Post tracking number with her; however, the Agent, G.M., confirmed that he had received the Tenant’s Notice of Hearing documents and evidence, and that he had reviewed these documents. I find that the Landlord was served with the Tenant’s Notice of Hearing documents and evidence in compliance with the Act.

The Agent, G.M., said that the Tenant was served with the Landlord’s Notice of Hearing documents and evidence through Canada Post registered mail sent on May 21, 2021, and with another package sent on July 9, 2021. The Agent submitted Canada Post tracking numbers to support this testimony.

However, I note from our records that the Landlord applied for dispute resolution on June 16, 2021, and was provided with the Notice of Hearing package by the RTB on July 12, 2021. As such, I find that the Landlord could not have served the Tenant with the Notice of Hearing documents on May 21, 2021 or July 9, 2021, because they did not yet have the documents to serve.

In terms of the second package that the Agent said they served to the Tenant on July 9, 2021, the Agent provided a Canada Post tracking number, which I looked up after the hearing. The Canada Post website indicates that the Landlord sent this package to the Tenant on September 7, 2021 (09/07/21), rather than July 9, 2021 (07/09/21).

Pursuant to Rule 3.1, an applicant must, within three days of receiving the Notice of Hearing package from the RTB, serve each respondent with copies of all of the documents contained in the package sent by the RTB.

The Notice of Hearing package was provided to the Landlord by the RTB via email on July 12, 2021. According to Rule 3.1, the Landlord should have served the Tenant with the Notice of Hearing package by July 15, 2021.

Based on the evidence before me overall regarding service, I find that the Landlord failed to serve the Tenant with the Notice of Hearing documents pursuant to the Act and Rules. I, therefore, dismiss the Landlord's application without leave to reapply. Accordingly, I have only the Tenant's evidence and testimony before me.

Preliminary and Procedural Matters

The Parties provided their email addresses in their respective applications and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

As the Landlord's Application has been dismissed, I have only the Tenant's Application before me. However, the Tenant said that she is in the process of moving out of the residential property, and that she anticipates being out by the end of September 2021.

As the Tenant's application is for an order for repairs to the unit, I find that her application is no longer relevant, since she will not be the Tenant and will no longer have standing in the matter. Accordingly, I dismiss the Tenant's application wholly without leave to reapply.

Given that both Parties are unsuccessful in their applications, I decline to award either Party with the recovery of the \$100.00 Application filing fee.

Conclusion

The Landlord is unsuccessful in their application, because they did not serve the Tenant with their Notice of Hearing documents in compliance with the Act and Rules. As a result, the Landlord's application is dismissed wholly without leave to reapply.

The Tenant is unsuccessful in her application, because it involves repairs to the rental unit, from which she is in the process of moving. I have found her claims to no longer be relevant, and they are dismissed wholly without leave to reapply.

The tenancy continues until ended in accordance with the Act.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: September 21, 2021

Residential Tenancy Branch