



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNQ, FFT

Introduction

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

- cancellation of the landlord's Two Month Notice to End Tenancy Because the Tenant Does not Qualify for Subsidized Rental Unit, pursuant to section 49.1;
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord did not attend this hearing, which lasted approximately 13 minutes. Tenant BS ("tenant") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing began at 1:30 p.m. and ended at 1:43 p.m. I monitored the teleconference line throughout this hearing. 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 people who called into this teleconference.

The tenant confirmed that he had permission to represent the other two tenants named in this application, who are his wife and daughter (collectively "tenants").

At the outset of this hearing, I notified the tenant that Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* does not permit recording of this hearing by anyone. The tenant affirmed, under oath, that he would not record this hearing.

At the outset of this hearing, I explained the hearing process to the tenant. He had an opportunity to ask questions. He did not make any adjournment or accommodation requests.

Preliminary Issue – Service of Tenant's Application

The tenant testified that the landlord was served with the tenants' application for dispute resolution hearing package, by leaving a copy in the landlord's mailbox. He said that he does not remember the date, but it was either before June 2021 or on June 15 or 20, 2021.

Section 89(1) of the *Act* states the following (my emphasis added):

89 (1) An application for dispute resolution ..., 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.*

Accordingly, I find that the tenants failed to prove service in accordance with section 89 of the *Act* and the landlord was not served with the tenants' application. I notified the tenant that leaving the tenants' application in the landlord's mailbox was not permitted by section 89 of the *Act*. The landlord did not attend this hearing to confirm receipt of the tenants' application.

I informed the tenant that the tenants' application was dismissed with leave to reapply, except for the filing fee. I notified him that he could file a new application, if he wants to pursue this matter in the future. He confirmed his understanding of same.

The tenant said that he is still living in the rental unit and he received another notice to end tenancy from the landlord. I informed him that he could reapply as soon as possible, due to the deadlines to dispute the notices. I notified him that he could obtain assistance from an agent to file an application. I informed him that if he requires assistance with English language translation, he could have a friend, family member or agent assist him at a future hearing. He confirmed his understanding of same.

Conclusion

The tenants' application to recover the \$100.00 filing fee is dismissed without leave to reapply.

The remainder of the tenants' application 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: September 24, 2021

Residential Tenancy Branch