



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, LAT, FFT

Introduction

This hearing dealt with cross-applications filed by the Tenant. On May 27, 2021, the Tenant made an Application for Dispute Resolution seeking an Order to comply pursuant to Section 62 of the *Residential Tenancy Act* (the “*Act*”), seeking authorization to change the locks pursuant to Section 31 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On August 6, 2021, the Tenant made another Application for Dispute Resolution seeking to cancel a One Month Notice to End Tenancy for Cause (the “*Notice*”) pursuant to Section 47 of the *Act* and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On June 10, 2021, these hearings were scheduled to commence via teleconference at 9:30 AM on September 28, 2021.

Both the Tenant and the Landlord attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties provided a solemn affirmation.

The Tenant advised that she served the first Notice of Hearing and evidence package to the Landlord by posting it to his door on June 12, 2021 and the Landlord confirmed

receiving this package. Based on this undisputed evidence, I am satisfied that the Landlord was duly served the Notice of Hearing and evidence package. As such, I have accepted the Tenant's evidence and will consider it when rendering this Decision.

The Tenant advised that she served the second Notice of Hearing and evidence package to the Landlord by registered mail on August 24, 2021 and the Landlord confirmed receiving this package. Based on this undisputed evidence, I am satisfied that the Landlord was served the second Notice of Hearing and evidence package. As such, I have accepted the Tenant's evidence and will consider it when rendering this Decision.

The Landlord advised that he served his evidence package to the Tenant by posting it to her door on September 17, 2021 and the Tenant confirmed that she received it on this date. Based on this undisputed evidence, I am satisfied that the Tenant was served the Landlord's evidence package. As such, I have accepted the Landlord's evidence and will consider it when rendering this Decision.

Pursuant to Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and the parties were informed that I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Notice and the Tenant's other claims were dismissed with leave to reapply. The Tenant is at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?

- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fees?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on November 15, 2019, that rent was currently established at an amount of \$700.00 per month, and that it was due on the first day of each month. A security deposit of \$350.00 was also paid. A copy of the signed tenancy agreement was not submitted as documentary evidence.

The Landlord initially testified that the Notice was served to the Tenant by posting it to her door on July 9, 2021. He advised that he was speaking to the Tenant through the door because she would not open it, and as such, he posted the Notice. He stated that he had a witness with him, and this person signed the Notice corroborating service. A copy of this Notice was submitted as documentary evidence. The reason the Landlord served the Notice is because the “Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.” The Notice indicated that the effective end date of the tenancy was August 31, 2021.

The Tenant advised that she never received a copy of the Notice until she received the Landlord’s evidence on September 17, 2021. She stated that the witness indicated on the Notice that it was served under her door and she noted that this is not a valid method of service under the *Act*. The only reason she filed the Application to dispute the Notice is because she received a note from the Landlord on August 2, 2021 indicating that she did not dispute the Notice. Otherwise, the only time she had seen this Notice was when she received the Landlord’s evidence on September 17, 2021, and by this time, it was too late to respond to it.

When the Landlord was asked about service of the Notice and why it indicated, by his witness on the third page of the Notice, that it was served by being placed under the door, he provided contradictory testimony and confirmed that it was actually served

under the door as opposed to being posted on the door, as earlier stated. He submitted that this was placed under the door as he did not know this was not a valid method of service under the *Act*.

He was then asked about his August 2, 2021 letter to the Tenant that stated “You have not disputed in the 10 days you had the eviction notice I gave you on July 19, 2021...” Given that he originally stated that the Notice was served on July 9, 2021, he was asked why this note indicated that the Notice was served on July 19, 2021. He stated that he must have made an error on this note.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 88 of the *Act* outlines all the manners with which a document can be served as follows:

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.*

As the Notice was allegedly served by being placed under the door, I am not satisfied that this was served in a manner that complies with the *Act*.

Regardless, service of documents is rebuttable if there is evidence to prove otherwise. I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party serving the Notice has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Even though the Landlord had a signed witness statement that this Notice was served, this witness confirmed that it was served in a manner that did not comply with the *Act*. While I am skeptical that the Tenant did not ever receive this Notice, given that the Notice was not served in accordance with the *Act*, given that the Landlord provided inconsistent testimony about how it was served, and given that the Landlord indicated in his note of August 2, 2021 that the Notice was served on July 19, 2021 as opposed to July 9, 2021, I find that there are too many inconsistencies to be satisfied that the Notice was actually served on a specific date, or in a manner pursuant to the *Act*.

As such, I am not satisfied that the Landlord has sufficiently corroborated that the Notice is valid. Consequently, I find that the Notice of July 9, 2021 is cancelled and of no force and effect.

As the Tenant was successful in the Application to dispute the Notice, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this Application. Under the

offsetting provisions of Section 72 of the *Act*, I allow the Tenant to withhold this amount from the next month's rent.

With respect to the filing fee on the Tenant's first Application, I find it important to note that the Tenant did not have to file a separate Application to dispute the Notice as she could have simply amended her initial Application to include a dispute of the Notice, thereby saving herself from another filing fee. As it was unnecessary for the Tenant to pay for two separate Applications, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for the first Application

Conclusion

Based on the above, I hereby order that the One Month Notice to End Tenancy for Cause of July 9, 2021 to be cancelled and of no force or effect.

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 28, 2021

Residential Tenancy Branch