



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNRL-S, FFL

Introduction

The Landlord applies for an order of possession pursuant to s. 55 of the *Residential Tenancy Act* (the “Act”) after issuing a One-Month Notice to End Tenancy signed on June 24, 2021 (the “One-Month Notice”). The Landlord also seeks an order for unpaid rent and for return of their filing fee.

P.L. appeared as agent for the Landlord. The Tenant did not attend.

The Landlord’s agent affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The Landlord confirmed that they were not recording the hearing.

Tenant’s Death

P.L. advised that the Tenant had passed away since the Landlord filed their application on July 26, 2021. P.L. did not indicate when the Tenant had passed away, but the Landlord had learnt of the Tenant’s passing on October 19, 2021.

I asked P.L. whether the Tenant’s estate or a representative for the Tenant had been notified of the hearing. P.L. was unable to confirm whether the Landlord has done this, however, it appears the Landlord has spoken with the Tenant’s sister.

The circumstances are unusual. Rule 3.5 of the Rules of Procedure require an applicant to demonstrate at the hearing they have, in fact, served the relevant parties with the Notice of Dispute Resolution and evidence. The Landlord has served the Notice of Dispute Resolution and their evidence on the Tenant by way of registered mail sent on August 11, 2021, which appears to be before the Tenant passed away.

I note the following from Policy Guideline 12 states the following with respect to serving documents on a deceased person:

Where a party to an application for dispute resolution is deceased, the personal representative of the deceased's estate should be named. If the deceased is a respondent to an application, the personal representative should be named and served. If the applicant does not know the name of the deceased's personal representative at the time of filing an application for dispute resolution, the deceased's name can be filled in on the application (e.g. John Doe, deceased). At the hearing, the arbitrator may amend the application to reflect the proper name of the estate.

The personal representative may be the person named as executor in the deceased's will, or the person who has been approved by the court to administer the estate by way of an estate grant.

I find that the Landlord, upon learning that the Tenant had passed away, ought to have taken steps to notify the Tenant's next-of-kin of the proceedings. Though I accept they did serve the Tenant with the application materials, I find that circumstances are such that notice must be provided to the deceased's estate given that the Tenant is no longer living. Ultimately, the estate will be the party to bear the cost of a monetary award if it is granted. Given that the Landlord has failed to demonstrate service on the Tenant's estate or a representative who may act on behalf of the Tenant, I dismiss the Landlord's application with leave to reapply.

P.L. further advised that the Landlord has not yet taken occupation of the rental unit. The doctrine of frustration is applicable under the circumstances. As stated in Policy Guideline 34:

A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract

I find that the Tenant's death is a radical change such that fulfillment of the tenancy agreement is now impossible as one of the parties is no longer living. The Landlord did not know the precise date upon which the Tenant died. However, I accept that the tenancy ended when they learnt of the Tenant's passing on October 19, 2021. Pursuant to s. 56.1(2) of the *Act*, I find that the tenancy ended on October 19, 2021. The Landlord shall have an order of possession effective on that date.

Conclusion

As the Landlord has failed to demonstrate service of the Notice of Dispute Resolution and evidence on the Tenant's estate or a representative for the deceased Tenant, their application is dismissed with leave to reapply.

I find that the Tenant's death has frustrated the tenancy agreement such that its fulfillment is now impossible. I order pursuant to s. 56.1(2) of the *Act*, that the tenancy ended on October 19, 2021, the date upon which the Landlord learnt of the Tenant's passing. The Landlord shall have an order of possession effective on that date.

As the Landlord was unsuccessful on their application, I would typically order that their claim for their filing fee be dismissed without leave to reapply. However, I accept that the Landlord has been placed in an unusual set of circumstances as the Tenant passed away between the application being made and the hearing. Accordingly, the Landlord's claim for the \$100.00 filing fee for this application will also be 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: November 26, 2021

Residential Tenancy Branch