



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **LRE, CNC, OLC, FFT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order to restrict or suspend the landlord's right of entry pursuant to section 70;
- Cancellation of One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to section 47;
- An order requiring the landlord to comply with the Act pursuant to section 62;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Both parties attended the hearing and had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained.

This is the second hearing between the parties; reference to the previous Decision dated August 30, 2021 appears on the first page.

Preliminary Application by Landlord- Dismissal of Tenant's Claims

The landlord requested the tenant's application be dismissed without leave to reapply for two reasons:

1. The tenant did not serve the landlord with the Notice of Hearing and Application for Dispute Resolution as required by section 90 of the Act; and

2. The issue of the One Month Notice has already been heard. The tenancy was ended by Order of Possession granted in the previous Decision. The bailiff removed the tenant from the unit on September 15, 2021. The tenant is not entitled to the Orders requested.

The tenant's application to cancel the One Month Notice was considered and dealt with in the previous hearing. In the previous Decision, the tenant's application was dismissed, and the landlord was granted an Order of Possession. The parties agreed the tenancy ended on August 15, 2021 when the bailiff removed the tenant pursuant to the Order of Possession in the previous Decision.

As the issue of the tenant's application to cancel the One Month Notice has already been dealt with, I dismiss the tenant's claim without leave to reapply.

The landlord testified she was informed of today's hearing in phone calls with the RTB.

The landlord testified that she submitted a Change of Address to the tenant in the RTB form dated August 5, 2021 and signed by her. As the tenant submitted a copy of the Change of Address as evidence, the landlord asserted that the tenant knew the landlord's current address.

Nevertheless, the tenant denied knowing the landlord had moved and the tenant testified she sent the Notice of Hearing and Application for Dispute Resolution to the landlord at the landlord's previous address.

Service of dispute resolution documents is set out in section 89 of the *Act* which states (emphasis added):

- 89** (1) An application for dispute resolution ... 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*].

Considering the testimony and evidence, I find the landlord informed the tenant of the landlord's change of address through the form referenced above and submitted by the tenant as part of her claim. The tenant sent the Notice of Hearing and Application for Dispute Resolution to the wrong address. As I find the tenant did not affect service under section 89, I therefore dismiss the application without leave to reapply.

As well, the parties agreed the tenancy ended on August 15, 2021 when the bailiff removed the tenant pursuant to an Order of Possession in the previous Decision. As the tenancy relationship has ended, the tenant is not entitled to bring an application for the remaining two claims, that is, an order requiring the landlord to comply with the Act and an order to restrict or suspend the landlord's right of entry.

As the tenant has not been successful in her application, I dismiss the claim for reimbursement of the filing fee.

Conclusion

The application is dismissed in its entirety without 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: January 17, 2022

Residential Tenancy Branch