



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNETC, FFT

Introduction

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

- compensation of \$23,100.00 from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord did not attend this hearing, which lasted approximately 24 minutes. The two tenants (male and female) attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenants intended to call a witness, who was excluded from the outset of this hearing, and did not return to testify.

This hearing began at 1:30 p.m. and ended at 1:54 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 two tenants and I were the only people who called into this teleconference.

Both tenants confirmed their names and spelling. The female tenant confirmed the rental unit address. She provided an email address for me to send this decision to both tenants after the hearing.

At the outset of this hearing, I informed the two tenants that recording of this hearing was not permitted by anyone, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. Both tenants separately affirmed, under oath, that they would not record this hearing.

I explained the hearing process to both tenants. I informed them repeatedly that I could not provide legal advice to them. They had an opportunity to ask questions, which I answered. They did not make any adjournment or accommodation requests.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants' application to add the rental unit number to the address. The female tenant consented to this amendment during this hearing, and I find no prejudice to the landlord in making same.

Preliminary Issue – Service of Tenants' Application

The tenants were required to serve the landlord with a copy of the tenants' application, notice of hearing, and evidence, within three days of receiving it from the RTB, as per Rule 3.1 of the RTB *Rules of Procedure*. The tenants filed this application on July 2, 2021, and the notice of hearing is dated July 19, 2021.

The female tenant testified that the landlord was served with the above documents on July 28, 2021, by registered mail to the rental unit address. The tenants provided a Canada Post receipt, and the female tenant confirmed the tracking number verbally during this hearing. She said that the mail was returned to the tenants as sender.

I asked the tenants why they served the landlord at the rental unit address. The female tenant said that she was given a notice to end tenancy by her former landlord, which said that the landlord named in this application, as the purchaser, would move into the rental unit. She stated that although the notice provided a different address for the landlord, she used the rental unit address, because the landlord was supposed to move there. She claimed that she was told by RTB information officers twice, that she could serve the landlord at the rental unit address.

The female tenant stated that she received an email from the RTB on July 19, 2021, with the application documents. She said that she was told by the RTB in that email, to serve the application documents to the tenant by July 22, 2021. She explained that when she called the RTB on July 28, 2021, she told the RTB information officer that she was serving the application late because the RTB email had gone to her "spam" folder. She claimed that she was advised about service deadlines at that time. She agreed that she spoke to another information officer on August 19, 2021 and was concerned about service of her application because the mail was returned to sender, since she sent it to the rental unit address. She confirmed that she was told by the information officer that it was up to the Arbitrator at the hearing to decide. She agreed that she was directed to the RTB public website by an information officer on December 9, 2021. She

said that when she was emailed by the RTB on January 10, 2022, asking if this hearing was still required, she emailed the RTB back on January 12, 2022, to indicate that she still required this hearing.

Section 89(1) of the *Act* outlines the methods of service for an application for dispute resolution, which reads in part as follows (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].*

Residential Tenancy Policy Guideline 12 states the following, in part (my emphasis added):

*Registered mail includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a **named person** is available.*

Proof of service by Registered Mail should include the original Canada Post Registered Mail receipt containing** the date of service, the address of service, and that **the address of service was the person's residence at the time of service,** or the landlord's place of conducting business as a landlord at the time of service as well as a **copy of the printed tracking report.

I find that the tenants did not provide sufficient evidence that they served the landlord with the tenants' application, as required by section 89 of the *Act* and Residential Tenancy Policy Guideline 12.

I find that the tenants did not serve the landlord at the address provided on page 2 of the notice to end tenancy, a copy of which was provided by the tenants for this hearing. I find that the tenants did not provide sufficient documentary evidence to show that the landlord provided the rental unit address as a residential address or an address where the landlord carries on business. The notice indicates that the “purchaser or a close family member intends...to occupy the rental unit.” Therefore, the landlord OR a close family member could occupy the rental unit. The notice does not indicate if or when the landlord actually occupied the rental unit. Moreover, the notice to end tenancy indicates an effective date of March 31, 2021; the tenants mailed their application on July 28, 2021, almost four months later; and this hearing occurred on January 18, 2022, over 9 months later.

The tenants had ample time from filing this application on July 2, 2021, to this hearing date of January 18, 2022, to provide the above information. The landlord did not attend this hearing to confirm service.

Further, the tenants sent the above documents on July 28, 2021, more than three days after the deadline of July 22, 2021, contrary to Rule 3.1 of the *RTB Rules of Procedure*. I find that the tenants did not provide a sufficient explanation as to why they were late. They did not check their email properly, to see that the RTB had sent the application documents there. The tenants voluntarily chose to file this application on July 2, 2021; they were not required or forced to do so.

I informed the tenants that they could hire a lawyer to obtain legal advice. I notified them that they could have an agent assist them with their application and attend the hearing on their behalf. I informed them that they could refer to the fact and instructions sheets sent to them with this application, for information regarding the hearing process. I notified them that they could consult the RTB website, which they were directed to by an information officer on December 9, 2021. I informed them that the RTB website has access to the *Act*, the *Residential Tenancy Regulation*, the *Rules of Procedure*, and Residential Tenancy Policy Guidelines. I repeatedly informed them that neither I, nor any RTB information officers, could provide legal advice to them. I notified them that information officers are only available to provide information and resources, such as the RTB website, which they already did. I cautioned them that applicants are required to provide sufficient documentary and testimonial evidence to prove their monetary claim, if they apply for same in the future, at the RTB. The tenants confirmed their understanding of same.

I notified the tenants that their application was dismissed with leave to reapply, except for the \$100.00 filing fee. I informed them that they could file a new application, pay a new filing fee, and provide proof of service at the next hearing, if they want to pursue this matter further. They confirmed their 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: January 18, 2022

Residential Tenancy Branch