



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction and Preliminary Matters

On October 14, 2021, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This Application was originally set down for a hearing on December 20, 2021 at 11:00 AM but was subsequently adjourned for reasons set forth in the Interim Decision dated December 21, 2021. This Application was then set down for a final, reconvened hearing on January 24, 2022 at 9:30 AM.

The Landlord attended the reconvened hearing; however, the Tenant did not attend the reconvened hearing at any point during the 14-minute teleconference. I informed the Landlord that recording of the hearing was prohibited and she was reminded to refrain from doing so. She acknowledged this term. As well, she provided a solemn affirmation.

In the original hearing, the Landlord advised that she did not serve the Notice of Hearing package to the Tenant as she discovered that the Tenant had been hospitalized and was not able to return to the rental unit. Due to the unforeseen circumstances, efforts were made to adjourn this hearing in an attempt to provide the Landlord with another opportunity to sufficiently serve the Tenant with the Notice of Hearing package.

At the reconvened hearing, the Landlord was asked when and how she re-served the Notice of Hearing package to the Tenant. She advised that she served this package to

the Tenant at the dispute address, by registered mail. She testified that she knew the Tenant did not live there and that the Tenant would not be returning. When she was asked why she elected to serve this package to the dispute address when she knew that the Tenant would not receive it, she stated that the Arbitrator at the previous hearing told her to do so. Clearly, she did not realize that I was the same person that presided over the original hearing.

Firstly, the Landlord was never provided with direction to serve the Tenant with the Notice of Hearing package by registered mail to the dispute address. It does not make sense to serve the Tenant at a place that she now no longer resides at. This direction would have never been provided, especially given the knowledge that the Application would have been dismissed in this event. As the Landlord made an attempt to portray a scenario that the previous Arbitrator advised her to do this, it was evident that she was unaware that I was seized of the file and would be presiding over the reconvened hearing. In my view, this was a clear attempt by the Landlord to represent a situation dishonestly in an effort to achieve an outcome that was favourable to her. This causes me to doubt the Landlord's credibility on the whole.

Secondly, the Interim Decision provided her with clear direction about either seeking legal advice, or advising her to consult with the Public Guardian and Trustee, in order to determine how best to serve this package if she was uncertain. Again, this would support a conclusion that she was not directed to serve the Tenant with the Notice of Hearing package by registered mail to the dispute address. It was evident that the Landlord was attempting to provide fraudulent testimony despite solemnly affirming to tell the truth at the beginning of the reconvened hearing.

Great expense and resources were utilized in an effort to reschedule a hearing for the Landlord's benefit in an effort to provide her with an opportunity to serve the Notice of Hearing package in a suitable manner so that the Landlord could proceed with her claims. It should be noted that by acting in this manner, the Landlord deprived another party of this hearing spot, as this time could have been used in a more fruitful and legitimate way. Regardless, as the Landlord failed to serve the Notice of Hearing package to the Tenant in a manner that was acceptable, I have dismissed this Application.

As the Landlord was not successful in these claims, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

The Landlord's 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 24, 2022

Residential Tenancy Branch