



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, CNL, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on November 07, 2021 (the “Application”). The Tenant applied as follows:

- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement
- To dispute a Two Month Notice to End Tenancy for Landlord's Use of Property (the “Notice”)
- To recover the filing fee

The Tenant appeared at the hearing with the Witness. The Witness was not involved in the hearing until required. Nobody appeared at the hearing for the Landlord. I explained the hearing process to the Tenant who did not have questions when asked. I told the Tenant they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Tenant provided affirmed testimony.

The Tenant confirmed the request for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement is the same as the dispute of the Notice and therefore the additional request is dismissed **without** leave to re-apply.

Preliminary Issue – Service

The Tenant submitted evidence prior to the hearing. The Landlord did not submit evidence. I addressed service of the hearing package and Tenant’s evidence.

The Tenant testified that the hearing package was served on the Landlord in person November 13, 2021. The Tenant testified that the Witness was present for service.

The Witness rejoined the hearing and was affirmed. The Witness testified as follows. They went to the address for the Landlord on the Notice on November 13, 2021 with the Tenant. They asked a male at the residence for the Landlord. They ended up leaving the package in the mailbox at the residence. As they walked away, the male took the package out of the mailbox. They saw an email from the Landlord to the Tenant acknowledging receipt of the hearing package. The Witness exited the conference call.

I asked the Tenant why their testimony about service differed from that of the Witness. The Tenant then changed their testimony about service and testified that they drove to the Landlord's house with the Witness on November 13, 2021, put the hearing package in the mailbox and a male took the package as they were walking away. The Tenant testified that they do not know who the male is.

I asked if the Tenant submitted the email referred to by the Witness in which the Landlord acknowledged receipt of the hearing package. The Tenant testified that it was a text message and they did not submit it.

The hearing package had to be served in accordance with section 89(1) of the *Residential Tenancy Act* (the "*Act*") which states:

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...
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];
- (f) by any other means of service provided for in the regulations.

Leaving the hearing package in the mailbox of the Landlord's residence is not a form of service permitted under section 89(1) of the *Act*. Neither is leaving the hearing package with an unknown person at the Landlord's residence a permitted form of service under section 89(1) of the *Act*. I do not accept that the hearing package was served on the Landlord in person because the Tenant and Witness gave contradictory testimony about this and the Tenant changed their testimony about this after hearing from the Witness. In the circumstances, I am not satisfied the hearing package was served in accordance with section 89(1) of the *Act* as required.

Pursuant to section 71(2) of the *Act*, an arbitrator can order that a document not served in accordance with section 89 of the *Act* is sufficiently served for the purposes of the *Act*. The Tenant and Witness testified that the Landlord acknowledged receipt of the hearing package by email or text message. However, the Tenant did not submit a copy of the email or text message, which would have been simple to do. I am not satisfied based on the testimony of the Tenant and Witness alone that the Landlord was sufficiently served for the purposes of the *Act* in the absence of the email or text message from the Landlord. I note that the Tenant and Witness gave conflicting testimony about service and the Tenant changed their testimony about service during the hearing and therefore I do not find the verbal testimony presented by the Tenant particularly credible or reliable.

Given the above, I am not satisfied of service of the hearing package. The Landlord did not appear at the hearing to confirm service of the hearing package. The Landlord did not submit evidence for the hearing which may have satisfied me that the Landlord received the hearing package. There is no documentary evidence before me confirming the Landlord received the hearing package. In the circumstances, the Application is dismissed. The dispute of the Notice is dismissed **with** leave to re-apply; however, this decision does not extend any time limits set out in the *Act*. The request to recover the filing fee is dismissed **without** leave to re-apply because the Tenant was not successful on the Application.

I acknowledge that dismissing the Application engages section 55(1) of the *Act* in relation to issuing the Landlord an Order of Possession; however, I decline to issue an Order of Possession to the Landlord because the Landlord was not at the hearing to confirm they are seeking an Order of Possession based on the Notice.

Conclusion

The request for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement is dismissed **without** leave to re-apply.

The dispute of the Notice is dismissed **with** leave to re-apply; however, this decision does not extend any time limits set out in the *Act*.

The request to recover the filing fee is dismissed **without** leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: January 19, 2022

Residential Tenancy Branch