



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, LAT, MNDCT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- an order for the landlord to comply with the Act, the Residential Tenancy Regulation (the Regulation) and/or tenancy agreement, pursuant to section 62;
- an order of authorization to change the locks, pursuant to sections 31 and 70; and
- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (Regulation) or tenancy agreement, pursuant to section 67.

The hearing on October 01, 2021 was adjourned to February 07, 2022. This decision should be read in conjunction with the interim decision arising out of the October 01, 2021 hearing.

Tenant AM (the tenant) and landlords CS and MJ attended the hearing on February 07, 2022. The tenant was assisted by advocate AM. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the February 07, 2022 hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

The notices of hearing dated June 18, 2021 and October 04, 2021 list applicant tenant AM and respondent landlord CS. The application is for an order for the landlord to comply with the Act and to change the locks.

Applicant AM affirmed she moved out of the rental unit on September 01, 2021 under duress and that she would like to obtain a monetary order for compensation.

Applicant AM was authorized to serve landlord CS the notice of hearing and the evidence (the materials) by email. The substitute service decision dated September 03, 2021 states:

For this reason, I allow the landlord substituted service of the Notice of Dispute Resolution Proceeding, with supporting documents and written evidence, by e-mail to the tenant at the e-mail address indicated on the first page of this decision.

I order the landlord to provide proof of service of the e-mail which may include a print-out of the sent item, a confirmation of delivery receipt, or other documentation to confirm the landlord has served the tenant in accordance with this order. If possible, the landlord should provide a read receipt confirming the e-mail was opened and viewed by the tenant.

Conclusion

The landlord is granted an order for substituted service. The landlord may serve the tenant the Notice of Dispute Resolution Proceeding, with supporting documents and written evidence, along with a copy of this substituted service decision, to the tenant's e-mail address as set out above.

I order that documents served in this manner have been sufficiently served to the landlord for the purposes of the Act, three days after the date that the e-mail is sent by the tenant to the landlord.

(emphasis added)

The interim decision dated October 01, 2021 states: "No findings of fact or law are made."

The tenant amended the application on January 21, 2022 to request a monetary order for compensation and to add a new respondent.

The tenant affirmed she served the materials, the substitute service decision and the amendment to CS by email on January 21, 2022 and to MJ in person on January 23, 2022. The tenant's advocate affirmed that after he emailed the materials, the substitute service decision and the amendment he called and texted CS, but CS did not reply to the text messages and did not answer the phone.

CS affirmed he is not sure when he received the email sent on January 21, 2022, he may have received the email earlier and that he does not recall receiving text messages or phone calls from the tenant's advocate.

CS and MJ confirmed their current addresses for service. The addresses are recorded on the cover page of this decision. CS affirmed that his address will not change until July 2022.

Based on the tenant's undisputed testimony, I find the application for an order for the landlord to comply with the Act and to change the locks is moot since the tenancy has ended.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the application for an order of possession.

Residential Tenancy Branch Policy Guideline 12 states:

A party wishing to rebut a deemed receipt presumption should provide to the arbitrator clear evidence that the document was not received or evidence of the actual date the document was received. For example, if a party claimed to be away on vacation at the time of service, the arbitrator would expect to see evidence to prove that claim, such as airplane tickets, accommodation receipts or a travel itinerary. It is for the arbitrator to decide whether the document has been sufficiently served, and the date on which it was served.

The decision whether to make an order that a document has been sufficiently served in accordance with the Legislation or that a document not served in accordance with the Legislation is sufficiently given or served for the purposes of the Legislation is a decision for the arbitrator to make on the basis of all the evidence before them.

(emphasis added)

Based on the testimony offered by the tenant and landlord CS, I find the tenant failed to prove, on a balance of probabilities, that landlord CS received the email sent on January 21, 2022 less than three days after it was sent. CS did not confirm when he received the email. The tenant emailed the CS on Friday, January 21, 2022. I find CS received the email on Monday, January 24, 2022.

Rule of Procedure 4.6 states:

As soon as possible, copies of the Amendment to an Application for Dispute Resolution form and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by section 89 of the Residential Tenancy Act or

section 82 of the Manufactured Home Park Tenancy Act and these Rules of Procedure. The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution form and supporting evidence as required by the Act and these Rules of Procedure.

In any event, a copy of the amended application and supporting evidence should be served on the respondents as soon as possible and must be received by the respondent(s) not less than 14 days before the hearing.

(emphasis added)

Rule of Procedure definition states: "In the calculation of time expressed as clear days, weeks, months or years, or as 'at least' or 'not less than' a number of days, weeks, months or years, the first and last days must be excluded."

Based on the testimony offered by the tenant and landlord CS, I find the tenant served the amendment one day late, as the email sent on January 21, 2022 is deemed received on January 24, 2022.

Based on the foregoing, I dismiss the application for a monetary order with leave to reapply. Leave to reapply is not an extension of timeline to apply.

Conclusion

I dismiss the application for a monetary order 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: February 09, 2022

Residential Tenancy Branch