



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Royal LePage Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes For the tenant: CNR-MT, OLC, LRE, FF
For the landlord: OPC, FF

Introduction, Preliminary and Procedural Matters-

This hearing convened as the result of the tenant's successful Application for Review Consideration.

This dispute began as a result of the cross-applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The tenant applied for the following:

- an order of possession of the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) served to the tenant;
- an order extending the time to file an application disputing the Notice issued by the landlord;
- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement;
- an order suspending or setting conditions on the landlord's right to enter the rental unit; and
- to recover the cost of the filing fee.

The landlord applied for the following:

- an order of possession of the rental unit pursuant to a One Month Notice to End Tenancy for Cause (1 Month Notice) served to the tenant; and
- to recover the cost of the filing fee.

On November 30, 2021, an arbitrator conducted the original hearing. At this hearing the landlord's agents attended and the tenant did not. The original arbitrator dismissed the tenant's application, due to his failure to attend, in a Decision issued on November 30, 2021. The original arbitrator also granted the landlord's application as they issued the landlord an order of possession of the rental unit effective two (2) days after service on the tenant and granted the landlord authority to retain \$100 to recover the cost of their filing fee.

The tenant filed the Application for Review Consideration which resulted in a Decision by another arbitrator with the Residential Tenancy Branch (RTB), on December 9, 2021, granting the tenant a new hearing on the parties' original applications for dispute resolution. That Decision is incorporated herein by reference and should be read in conjunction with this decision.

Under section 82(3), following this new hearing, I may confirm, vary, or set aside the original Decision and order.

At this new hearing, the tenant and the landlord's agents attended.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited and all parties affirmed they were not recording the hearing.

In the review consideration Decision of December 9, 2021, the original arbitrator ordered as follows:

I order that a new hearing of the original application take place. The decision issued on November 30, 2021 is suspended until that hearing is completed.

Notices of the time and date of the hearing are included with this Review Consideration Decision for the review applicant to serve to the review respondent within 3 days of receipt of this Decision. The review applicant must also serve a copy of this Decision to the other party.

The landlord's agents asserted at the hearing that the tenant did not serve the landlord with the notice of the new hearing or the Review Consideration Decision, explaining that they only found out about the hearing by way of a courtesy reminder email from the RTB.

In response, the tenant submitted that he served the landlord by having a friend drop off the documents to the landlord's office. In response to my inquiry, the tenant said he did not know the date of service or who received the documents. The tenant also did not offer the name of his friend who served the documents or have that friend present at the hearing.

During testimony, the tenant repeatedly stated that he never received a copy of the landlord's 1 Month Notice, and that is why it was not disputed by him. The tenant asserted he should not be evicted due to a mistake of paying rent one day late.

Issue(s) to be Decided

Should the original Decision granting the landlord an order of possession of the rental unit, dated November 30, 2021, be confirmed, varied, or set aside?

Analysis and Conclusion

Rule 3.5 states that at the hearing, the applicant must be prepared to demonstrate service of the hearing documents to the satisfaction of the arbitrator.

Section 81 (4) of the Act requires that:

Within 3 days of receiving a decision to proceed with a review, or within a different period specified by the director, the applicant must give the other party a copy of the decision and of any order giving effect to the decision.

I find that the tenant provided insufficient evidence that he served the required documents as ordered by the arbitrator in the Decision of December 9, 2021 and the Act, in granting this new hearing. The tenant could not answer basic questions about the date his friend dropped off the documents or who accepted the documents at the landlord's office, if they were delivered. I am therefore not satisfied that the tenant complied with the order of the December 9, 2021, Decision granting this new hearing.

As I find the tenant submitted insufficient evidence that he served the required hearing documents to the landlord, I find that the original Decision and the order of possession issued November 30, 2021, must be confirmed.

On this basis, I **confirm** the original Decision of the arbitrator, dated November 30, 2021, pursuant to section 82(3) of the Act, granting the landlord an order of possession of the rental unit (Order) and authority to keep \$100 from the tenant's security deposit to recover the cost of the filing fee. Therefore, the Order issued on that date remains valid and enforceable.

The tenant is cautioned that if he does not voluntarily comply with the Order, costs of such enforcement, **such as bailiff fees**, are subject to recovery from the tenant.

Additional information –

I find it important to note that although the tenant testified in this hearing that he never received the landlord's 1 Month Notice, in a previous dispute resolution hearing on September 14, 2021, on the landlord's application for an order ending the tenancy earlier than the tenancy would end if a notice to end the tenancy were given under section 47 of the Act, the tenant testified that he had received this 1 Month Notice "perhaps a couple of weeks after the Notice was posted, as he was out-of-town". The Notice was posted on the tenant's door on June 25, 2021.

This statement was recorded in my Decision of September 15, 2021. The file number for this dispute is referenced on the style-of-cause page of this Decision. Further, the Decision informed that tenant that his failure to dispute the 1 Month Notice meant the tenant's tenancy ended on July 31, 2021, the effective date of the 1 Month Notice.

The tenant's inconsistent and contradictory evidence leads me to conclude that any of the tenant's statements at this hearing were unreliable and therefore, not credible.

The tenant is reminded that under section 79 (7) of the Act, a party to a dispute resolution proceeding may make only one application for review consideration in respect of the proceedings.

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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: March 26, 2022

Residential Tenancy Branch