



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

The hearing was convened to address an Application for Dispute Resolution made by the Landlord under Residential Tenancy Act (the Act). The Landlord sought an order of possession based on an undisputed One Month Notice to End Tenancy for Cause and an order granting recovery of the filing fee.

The Landlord did not attend the hearing but was represented by PO, legal counsel. The Tenant attended the hearing and was accompanied by PL, who identified herself as an advocate. As the hearing unfolded, however, it became clear that PL also has a personal interest in the outcome, which is described below. The Tenant and PL provided a solemn affirmation at the beginning of the hearing.

On behalf of the Landlord, PO advised that the Landlord served the Tenant with the Notice of Dispute Resolution Proceeding (the NDRP) by registered mail on October 22, 2021. Canada Post registered mail receipts and a printed tracking report were submitted in support of service in this manner.

In reply, the Tenant testified that she did not receive the NDRP until February 15, 2022, at which time PO sent it to her by email. The Tenant testified the NDRP was not received before this date because it was sent to the rental address rather than her residential address, which the Landlord was aware of.

A brief history is in order before deciding with respect to service and receipt of the NDRP. There is no dispute that the Landlord and the Tenant entered into a tenancy agreement. At some point during the tenancy, the Landlord gave consent for the Tenant to sublet the rental unit to PL for a term ending September 30, 2021. The Tenant then moved to another community.

However, during the hearing, the Tenant testified that she advised the Landlord before the end of the sublet term that she would not be returning to the rental unit. As a result, the Tenant believed the Landlord and PL had entered into a new tenancy agreement.

PL continues to occupy the rental unit. During the hearing, she asserted that she entered into a new tenancy agreement with the Landlord. On February 17, 2022, an arbitrator heard an application brought by PL to cancel a One Month Notice to End Tenancy for Cause and for an order that the Landlord comply with the Act, the Residential Tenancy Regulation, and/or the tenancy agreement. A decision with respect to that hearing has not been issued as of the date of this decision. The file number for the related file is provided above for convenience.

With respect to service and receipt of the NDRP, an applicant must provide sufficient proof that the NDRP was served on the Tenant in accordance with the Act. In this case, PO acknowledged that the NDRP was sent to the rental address and not to the Tenant's residential address.

After careful consideration of the evidence and submissions of PO, LB, and PL, I find I am not satisfied the NDRP was served on the Tenant in accordance with the Act. It was sent to the rental address and not to the Tenant's residential address, and was not received until February 15, 2022.

Complicating matters further is the uncertain outcome of the hearing of February 17, 2022, which may address the nature of the relationship between the Landlord and PL and may dispose of the current application.

In conclusion, as I am not satisfied that the Tenant received the NDRP in accordance with the Act, and considering the related proceeding which may dispose of the issues raised in this proceeding, I find that 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: March 1, 2022

Residential Tenancy Branch