



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROMPTON REAL ESTATE
SERVICES and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNETC, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act"), for:

- monetary compensation of \$33,684.00 from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, pursuant to section 51;
- authorization to recover \$200.00 for filing fees paid for previous RTB applications, pursuant to section 72; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 72.

The two individual landlord owners named in this application (collectively "owners") did not attend this hearing, which lasted approximately 23 minutes. The landlord company's agent and the two tenants (male and female) attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenants intended to call a witness, who did not participate or testify at this hearing.

All hearing participants confirmed their names and spelling. The landlord company's agent and the female tenant provided their email addresses for me to send this decision to them after the hearing.

The male tenant confirmed that the female tenant had permission to speak on his behalf at this hearing.

The landlord company's agent confirmed that she was a property manager for the landlord company named in this application. She said that she only had permission to

speak on the landlord company's behalf at this hearing. She stated that she did not have permission to represent the owners at this hearing. She claimed that the landlord company is only an agent for the owners, it does not own the rental unit. She explained that the landlord company's contract to manage the owners' rental unit terminated at the end of May 2021.

At the outset of this hearing, I informed all hearing participants that recording of this hearing was not permitted by anyone, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. The landlord company's agent and the two tenants all separately affirmed, under oath, that they would not record this hearing.

I explained the hearing process to all hearing participants. I informed them repeatedly that I could not provide legal advice to them. They had an opportunity to ask questions, which I answered. They did not make any adjournment or accommodation requests.

At the outset of this hearing, I informed the tenants that they are not entitled to recover two RTB filing fees, totalling \$200.00, for previous RTB applications. The female tenant confirmed that they were told by the landlord company to refile their application to include the owners as parties, so they lost their filing fees. I notified the tenants that this portion of their application was dismissed without leave to reapply, as it was their choice to refile their application. Further, the tenants are required to apply for recovery of their filing fees at the time their application is made, not a future hearing date relating to a different application. The tenants confirmed their understanding of same.

Preliminary Issue – Service of Tenants' Application

At the outset of this hearing, the tenants stated that they named the owners as landlords-respondents in this application. They claimed that the owners were supposed to move into the rental unit but never did, as per the notice to end tenancy, which is the basis of this monetary application. They said that they knew the landlord company was not responsible for this monetary application because it was just an agent for the owners.

The tenants confirmed that they know the owners live out of the country. They maintained that they do not know the owners' business or residential address because they could not get a copy of it. They claimed that they did not want to hire an investigator, nor did they ask for a summons, so they only performed a title search. They explained that the title search shows the owners' mailing address is the same as the rental unit address.

The tenants maintained that they served the two owners with copies of their application for dispute resolution hearing package on September 29, 2021. They provided two Canada Post receipts with this application. They did not confirm the tracking numbers verbally during this hearing, nor did they provide copies of the Canada Post tracking reports.

I looked up the two tracking numbers, as noted on the two receipts provided by the tenants, on the Canada Post website. The website states the following for both tracking numbers:

“Item cannot be delivered; more details to be provided”

“Item re-routed due to processing error; Possible delay”

“Delivered to your concierge or building manager”

“Signature unavailable; verbal signature.”

Section 89(1) of the Act outlines the methods of service for an application for dispute resolution, which reads in part as follows (my emphasis added):

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;***
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].*

Residential Tenancy Policy Guideline 12 states the following, in part (my emphasis added):

*Registered mail includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a **named person** is available.*

Proof of service by Registered Mail should include the original Canada Post Registered Mail receipt containing the date of service, the address of service, and that the address of service was the person's residence at the time of service, or the landlord's place of conducting business as a landlord at the time of service as well as a copy of the printed tracking report.

I find that the tenants did not provide sufficient evidence that they served the owners with the tenants' application, as required by section 89 of the Act and Residential Tenancy Policy Guideline 12.

I find that the tenants did not provide sufficient documentary or testimonial evidence to show that the rental unit is a residential address or an address where the owners carry on business as landlords, or that the tenants' mailed application was delivered to a named person.

I find that the title search provided by the tenants does not indicate that the rental unit is a residential or business address of the owners. I find that the tenants provided affirmed testimony at this hearing, that the owners did not move into the rental unit, so it was not their residential address. I find that the tenants provided affirmed testimony that they know the owners are living out of the country. The tenants did not confirm the Canada Post tracking numbers verbally or provide the tracking reports for this hearing. The Canada Post website indicates above that there were multiple issues with mail delivery and processing, that there were no written signatures from the owners, and only verbal signatures from unnamed people as "concierge or building manager."

The tenants had ample time from filing this application on September 18, 2021, to this hearing date of April 8, 2022, to provide sufficient service evidence. The owners did not attend this hearing to confirm service.

I did not proceed with hearing this application against the landlord company only. Both parties agreed that the landlord company was only an agent of the owners during this tenancy. Both parties agreed that the landlord company does not own the rental unit and no longer had authority to represent the owners when their contract was terminated at the end of May 2021, prior to the tenants moving out on June 2, 2021.

I further find that the tenants were unsure of who the proper parties were to be named in this application. They asked me who they should name as parties and serve, where they could be served, how they could be served, what evidence to provide in support of their application, and other such information. I repeatedly informed the tenants that I could not provide legal advice to them, and it was up to them to provide this information for this hearing.

I informed the tenants that they could hire a lawyer to obtain legal advice. I notified them that RTB information officers do not provide legal advice, but only limited information to parties. I cautioned them that applicants are required to provide sufficient documentary and testimonial evidence to prove that they named the correct parties, they served the correct parties, and to support their monetary claim, if they apply for same in the future, at the RTB. The tenants confirmed their understanding of same.

I notified the tenants that their application for a monetary order of \$33,684.00 was dismissed with leave to reapply. I informed that their application to recover the \$100.00 filing fee paid for this application was dismissed without leave to reapply. I informed them that they could file a new application and pay a new filing fee, if they want to pursue this matter in the future. They confirmed their understanding of same.

Conclusion

The tenants' application for monetary compensation of \$33,684.00 from the landlord related to a Notice to End Tenancy for Landlord's Use of Property, is dismissed with leave to reapply.

The remainder of the tenants' application is dismissed without 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: April 08, 2022

Residential Tenancy Branch