



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNDC, MNR

Introduction, Preliminary and Procedural Matters-

This hearing dealt with the landlord's application for dispute resolution seeking remedy under the Residential Tenancy Act (Act) for:

- 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 of possession of the rental unit pursuant to a One Month Notice to End Tenancy for Cause (1 Month Notice) served to the tenant;
- compensation for a monetary loss or other money owed; and
- a monetary order for unpaid rent.

The landlord, the landlord's agent, and the tenant attended and due to the late evidence filed by the landlord, service of the Application for Dispute Resolution, evidence, and Notice of Hearing (application package) was considered.

The landlord's application was filed on January 7, 2022, and they were provided the application package from the Residential Tenancy Branch (RTB) to serve the tenant on January 20, 2022, by email, her listed preferred method of sending the application package. The landlord submitted that they served the tenant with the application package by registered mail on March 30, 2022.

The landlord's agent said the landlord did not intentionally delay in serving the required documents; however, the email from the RTB was apparently in the landlord's junk email and was discovered by the landlord around March 30, 2022.

In addition, the landlord filed evidence electronically on April 9, 10 and 11, 2022, which is one and two days prior, and the same day of the hearing.

Analysis and Conclusion

Section 59 (3) states that a person making an application for dispute resolution must give a copy of the application to the other party within 3 days of making it.

In this case, the evidence of the landlord is that they served the tenant by registered mail on March 30, 2022, which far exceeded the 3 day time limit required for service, as the landlord was provided the application package containing the application and hearing notice on January 20, 2022. It was upon the landlord to inquire with the RTB as to the status of her application within a reasonable time.

In addition, the landlord chose to serve the tenant by registered mail, which is deemed to be served 5 days after it was mailed. In other words, absent evidence to the contrary, the tenant was deemed served the landlord's application on April 4, 2022, one week prior to the hearing.

I find that to proceed with the hearing would be procedurally and administratively unfair to the tenant, given the above circumstances.

For these reasons, I find the landlord submitted insufficient evidence that their application package was served to the tenant according to the required time frame under the Act and within three days of receiving the application package. I therefore dismiss the landlord's application, **with leave to reapply**, due to service issues as described above.

I make no findings on the merits of the matter. Leave to reapply is not an extension of any applicable limitation period.

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(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: April 11, 2022

Residential Tenancy Branch