



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPN, FFL, MNRL, MNDL

Introduction

The Landlord seeks an order for possession pursuant to s. 55 of the *Residential Tenancy Act* (the “*Act*”) after the Tenant provided her a notice to end tenancy. The Landlord also seeks the return of her filing fee pursuant to s. 72 of the *Act*.

The Landlord filed two amendments to her application: one on May 11, 2022 and the second on June 3, 2022. The amendments relate to an additional claim for unpaid rent pursuant to s. 67 of the *Act* and a revision to increase the claim for unpaid rent.

L.H. appeared as the Landlord. The Tenant did not attend, nor did someone attend on her behalf.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenant did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

The Landlord affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The Landlord confirmed that she was not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord advised that the Notice of Dispute Resolution and her initial evidence was served via registered mail sent on March 17, 2022. The Landlord further advised that this was returned to her. On May 1, 2022, the Landlord says she attended the property with police officers and posted the registered mail package that was returned to her to the rental unit door. I find that the Landlord served the Notice of Dispute Resolution and her initial evidence on the Tenant by way of registered mail sent on March 17, 2022 and

by posting it to the Tenant's door on May 1, 2022. Policy Guideline #12 provides guidance with respect to service and indicates that refusing to sign or pick up registered mail does not affect the deeming provisions of the *Act*. Therefore, pursuant to s. 90 of the *Act*, I deem that the Tenant received the Landlord's application and initial evidence on March 22, 2022 and on May 4, 2022.

Dismissal of the Landlord's Application – The Tenant Vacating the Rental Unit

The Landlord seeks the order for possession pursuant to a notice received from the Tenant signed on January 1, 2022 that the Tenant would vacate by April 30, 2022. The Landlord advised that Tenant did not give vacant possession or surrender the keys on April 30th. The Landlord says that she has not had the keys to the rental unit surrendered to her at all.

The further Landlord advised that on May 17, 2022 she provided the Tenant with a notice to enter the rental unit and that she and a peace officer did attend the rental unit for an inspection on May 20, 2022. At that time, the peace officer opined to the Landlord that the Tenant had vacated the rental unit as there were no mattresses. The Landlord confirmed that she attended the rental unit sometime after May 20, 2022 and did some cleaning at the property, though says that there are still personal belongings that have been left behind.

The Landlord advised she did not receive notice from the Tenant when she left the rental unit, though received reports from the neighbours that the street had quieted down sometime after May 6. The Landlord did not receive a forwarding address from the Tenant.

Based on the information provided by the Landlord, it appears that the Tenant has vacated the rental unit. The Landlord attended the rental unit on two occasions, the first on May 20, 2022 and the second sometime after that. On neither occasion was the Tenant present. The Landlord did not advise that she took note of signs of occupancy during the second visit, which would have presumably been present had the Tenant continued to reside within the rental. The Landlord advised that hydro had been disconnected on May 31, 2022. She further advised that she has been contacted by the Tenant's mother on May 30, 2022 and on June 1, 2022 with respect to the Tenant surrendering the keys to the rental unit to the Landlord and that the Tenant's mother was apologetic.

Based on the undisputed evidence provided at the hearing and pursuant to s. 62(2) of the *Act*, I find that the Tenant abandoned the rental unit by at least May 20, 2022. This is confirmed by the disconnection of the hydro, the observations made by the Landlord, the opinion of the peace officer as communicated to me by the Landlord, and the observations of the neighbours as communicated to me by the Landlord.

I am unable to make a finding of when the Tenant abandoned the rental unit, though it likely occurred sometime between May 1, 2022 and May 20, 2022 given that the Tenant still resided at the rental unit on April 30, 2022, the Landlord attended the rental unit on May 1, 2022, the observations of the neighbours, and the inspection on May 20, 2022.

Given that the Tenant has abandoned the rental unit, there is no need for an order for possession. The Tenant is no longer in possession of the rental unit and there is nothing preventing the Landlord from taking vacant possession of it at the present time. The Landlord's claim under s. 55 is dismissed as it is no longer necessary.

The Tenant's abandonment of the rental unit by at least May 20, 2022 poses an issue with respect to service of the Landlord's amendments. The Landlord says that the first amendment was served to the rental unit by way of registered mail sent on May 11, 2022 and the second amendment sent on June 6, 2022. Rule 4.6 of the Rules of Procedure requires amendments to be served on the respondent as soon as possible and must be received at least 14 days before the hearing.

I am unable to make a finding that the Landlord's amendments were served on the Tenant as it is unclear whether the registered mail was sent to the rental unit after the Tenant abandoned it. The tracking information shows the registered mail for May 11, 2022 had been returned. The tracking information for the June 6, 2022 registered mail shows it was delivered, but there is no signature option selected, in contravention of Policy Guideline #12, and may have been left at the door. The Tenant cannot be said to have received the amendments if registered mail is sent to an address in which she no longer resides.

I find that the Landlord has failed to demonstrate service of the amendments as the registered mail may have been sent to an empty rental unit. I further find that it would be procedurally unfair to the Tenant to permit the claim for unpaid rent to proceed, particularly as she may not have received notice of it at all. Accordingly, I do not permit the amendments and they are dismissed with leave to reapply.

As the order for possession is no longer necessary and the amendments are not permitted, the only claim left is with respect to the Landlord's return of her filing fee pursuant to s. 72 of the *Act*. As no orders have been made, I find that the Landlord is not entitled to the return of her filing fee. Her application for an order for possession proved to be, in the end, unnecessary.

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: June 21, 2022

Residential Tenancy Branch