



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT

Introduction

This hearing dealt with the **tenant's** application pursuant to the *Residential Tenancy Act* (the "**Act**") for an order of possession of the rental unit pursuant to section 54.

The **landlord** did not attend this hearing, although I left the teleconference hearing connection open until **10:05 am** in order to enable the **landlord** to call into the hearing scheduled to start at **9:30 am**. The **tenant** and a witness ("**KM**") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, and to make submissions. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I used the teleconference system to confirm that the tenant, KM and I were the only ones who had called into the hearing.

Preliminary Issue – Service

The tenant testified that he served the landlord with the notice of dispute resolution proceeding package and supporting evidence via registered mail. He provided a registered mail tracking number confirming this mailing. He testified that there was no written tenancy agreement, and that he did not have a mailing address for the landlord. Accordingly, he sent these documents to the rental unit address. He testified that during the tenancy, the landlord attended the rental unit two to three times per week to pick up mail addressed to her. He stated that the rental unit is now being occupied by someone else, as he sees that the lights are turned on and off when he goes by the unit.

The tenant testified that he did not have an e-mail address for the landlord nor did he ever exchange text messages with her (despite having her phone number), so he had no other way of providing the documents to the landlord.

Section 89(1) of the Act sets out how applications for dispute resolution must be served:

Special rules for certain documents

89(1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, 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];
- (f) by any other means of service provided for in the regulations.

The *Residential Tenancy Regulations* permit service by e-mail in certain circumstances, which do not apply to this case. Section 89 of the Act does not permit service by sending it to the address of the rental unit in which the sender resides. Accordingly, I find that the tenant has not served the required documents in accordance with section 89 of the Act.

However, section 13 of the Act, in part, states:

Requirements for tenancy agreements

13(1) A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.

(2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

[...]

- (e) the address for service and telephone number of the landlord or the landlord's agent;

The landlord did not provide an address for service. Due to this breach of the Act, the tenant did not have anyway to serve the requisite documents on the landlord.

Section 71(2) of the Act states:

Director's orders: delivery and service of documents

71(2) In addition to the authority under subsection (1), the director may make any of the following orders:

- (a) that a document must be served in a manner the director considers necessary, despite sections 88 [how to give or serve documents generally] and 89 [special rules for certain documents];
- (b) that a document has been sufficiently served for the purposes of this Act on a date the director specifies;
- (c) that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.

Based on the fact that the landlord failed to provide the tenant with an address for service, that the landlord received mail at the rental unit during the course of the tenancy, and that the landlord attended the rental unit multiple times per week during the tenancy to retrieve

this mail, I find that the tenant served the required documents on the landlord sufficiently for the purposes of the Act, by mailing them to the rental unit by registered mail.

During the hearing, I entered the registered mail tracking number on the Canada Post website and discovered that the package had not been retrieved from the post office, despite a pickup slip being left at the rental unit. Of note, there is no reference to the person residing in the rental unit rejecting the package due to it being addressed to an incorrect person. From this, I infer that the landlord had a similar arrangement with the current occupant of the rental unit as she had with the tenant.

Issues to be Decided

Is the tenant entitled to an order of possession?

Background and Evidence

While I have considered the documentary evidence and the testimony of the tenant, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The tenant testified that he, his father, and the landlord entered into an oral tenancy agreement starting in September or October 2020. Monthly rent was \$800, and his father paid his security deposit of \$400 at the start of the tenancy which, to the best of the tenant's knowledge, the landlord has not returned. The tenant testified that both he and his father paid rent to the landlord.

The tenant testified that in early May 2022, the landlord delivered a notice demanding that they vacate the rental unit so that she could renovate it and sell it. This notice was not in an approved RTB form. On May 31, 2022 the tenant wrote a letter to the landlord (which he gave to her in person) advising her that this notice did not meet the form and content requirements set out at section 52 of the Act and that he considered it to be "illegal and unenforceable" as a result.

Despite this, the tenant testified in early June 2022, his father vacated the rental unit due to the stress caused by the landlord's notice and her associated conduct (which the tenant did not elaborate on). The tenant's father moved into a new unit and took many of his belongings with him. The tenant remained in the rental unit. The tenant testified that prior to his father's leaving, his father did not tell the landlord he would be doing so. However, after his father left, he testified that he believes she and his father discussed his departure.

The tenant testified that on June 25, 2022, the landlord attended the rental unit and removed the tenant's personal possessions from it and placed them outside. He provided a brief video showing this, and KM confirmed this via a written statement submitted prior to the hearing which she affirmed was true at the hearing. Following this, the

tenant did not return to the rental unit. He testifies that he may still have a key to the rental unit, but is not sure. As stated above, the tenant testified that someone else now resides in the rental unit.

Analysis

Residential Tenancy Branch (the “**RTB**”) Policy Guideline 51 discusses orders of possession for tenants. It states:

Order of Possession for Tenant

Under section 54 of the RTA and section 47 of MHPTA, a tenant may apply for an order of possession for the rental unit or home site if they have a tenancy agreement with the landlord. These types of applications may arise when a tenant and landlord have signed a tenancy agreement and the landlord refuses to give the tenant access to the rental unit, or the landlord has locked the tenant out of their rental unit.

Tenants should be aware that the director may not be able to grant an order of possession to a tenant in circumstances where another renter is occupying the rental unit; however, the tenant may file a separate application for monetary compensation from the landlord for any damage or loss they may have suffered.

If a tenant applies for an order of possession, they must be able to prove that a tenancy agreement exists between the tenant and landlord.

Based on the tenant's testimony, which I have relied upon in order to find that the landlord has been sufficiently served with notice of this application, I find that the rental unit is currently occupied. This fact may support a finding that I dismiss this application, as it would be unfair to the new occupant for me to order that they leave so as to allow the tenant to return. However, I am unsure who this new occupant is. It may be that it is not a renter, and is rather a family member of the landlord. Or, in the alternative, the rental unit may be rented out on a short-term basis (via Airbnb for example). As such the fact that it is occupied would not preclude me issuing an order of possession.

However, I am not confident that a tenancy agreement exists any longer between the tenant and the landlord, if one existed at all.

As there is no written tenancy agreement I cannot stay with any degree of certainty who the parties to the tenancy agreement are. The fact that the tenants father paid the security deposit and that the landlord took steps to remove the tenant from the rental unit only after the father had vacated, supports the proposition that it was the tenant's father, and not the tenant himself, who was the tenant under the oral tenancy agreement. If this were the case, the tenant would not have any entitlement to an order of possession.

In any event, even if the tenant was a party to the tenancy agreement, I find that the tenancy agreement had ended pursuant to section 44(1)(d) of the Act which states:

How a tenancy ends

44(1) A tenancy ends only if one or more of the following applies:
(d) the tenant vacates or abandons the rental unit;

If the tenant and his father were both parties to the tenancy agreement, they would be considered “co-tenants”. As co-tenants, either would have the power to end the tenancy, per RTB Policy Guideline 13 section E. If a tenancy is ended by either co-tenant, a new tenancy agreement must be created between the remaining tenant and the landlord. If this is not done, the tenancy would end, unless the circumstances suggest that the landlord and the remaining tenant implicitly entered into a new tenancy agreement (for example, if the remaining tenant continued to pay the full amount of rent to the landlord, who accepted payment without objection). Such circumstances do not exist in this case.

For these reasons, I decline to grant the tenant’s application for an order of possession.

This does not mean that the landlord conducted herself in accordance with the Act. Even if a tenancy is over, a landlord is not permitted to forcibly remove an occupant from a rental unit. A landlord must first obtain an order of possession from the RTB.

It does not appear that any such order was obtained. As stated in Policy Guideline 51 above, the tenant may be entitled to compensation as a result of the landlord’s of the Act. However, I cannot make any monetary order as part of this application, as the issue was not before me. The tenant would be required to a separate application seeking monetary compensation.

Conclusion

I dismiss the tenant’s application, 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: August 12, 2022

Residential Tenancy Branch