



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: CNL-MT, AAT, FFT
Landlord: OPL, FFL

Introduction

The Tenants (hereinafter, referred to as the “Tenant”) filed an Application on July 20, 2022 for:

- a cancellation of the Two-Month Notice to End Tenancy for Landlord’s Use of Property, with more time needed to dispute the notice
- their access to the rental unit
- reimbursement of the Application filing fee.

The Landlord filed an Application on July 23, 2022 for an Order of Possession in line with the served Two-Month Notice, and reimbursement of the Application filing fee. Because the Tenant’s Application was already in place, the Landlord’s Application was crossed for the same scheduled hearing.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on December 12, 2022. Both parties attended the conference call hearing to speak to the issues at hand.

The Tenant’s Application

The Tenant left the rental unit on approximately August 1, 2022 and did not return to the rental unit. The Tenant in the hearing stated they were locked out from the rental unit and their belongings were removed and placed in storage by the Landlord unilaterally.

Given that the tenancy has ended, and the Tenant has stated they were not seeking to return to the rental unit, the validity of the Two-Month Notice is not at issue.

Additionally, this cancels the Tenant's grounds to have access to the rental unit. For the Landlord's Application, there is also no need for a decision on the Landlord's right to an Order of Possession.

The Tenant provided evidence to the Residential Tenancy Branch on this hearing file more recently prior to the hearing. I did not review this information in detail in the hearing. It concerns amounts the Tenant feels they are properly owed by the Landlord because of the manner in which the tenancy ended. The Tenant did not amend their Application to incorporate this evidence and did not provide an accounting or otherwise make a claim for compensation. Additionally, the evidence was not labelled or otherwise indexed as required by Rule 3.7 of the *Residential Tenancy Branch Rules of Procedure*. A monetary claim does not form part of their Application here – that is a separate application for another dispute resolution.

For these reasons, I dismiss the Tenant's Application in its entirety. The Tenant did not seek to withdraw or otherwise amend their Application; therefore, I grant no reimbursement of the Application filing fee.

The Landlord's Application

At the start of the hearing, the Landlord stated they served their Notice of Dispute Resolution Proceeding (as provided to them by the Residential Tenancy Branch on August 9, 2022) to the Tenant via email. They stated this was on "August 10th or 11th" and they provided their evidence to the Residential Tenancy Branch on this same date. The Landlord referred to exhibits "A" through "I" as indexed in their evidence.

The Tenant responded to state they never received a Notice of Dispute Resolution Proceeding from the Landlord, nor did they receive exhibits, as evidence, from the Landlord.

The Landlord provided no documentary proof of a sent email to the Tenant, and did not in the hearing verify the exact date and time of an email containing the Notice of Dispute Resolution Proceeding, nor attachment of Exhibits.

With lack of proof, I find the Landlord did not make a reasonable attempt to serve the Tenant at a verified address, in a verified manner, as mandated under s. 89 of the *Act*.

There is no evidence the Landlord undertook to examine other ways to effect service via a verified address for service as per s. 89 of the *Act*.

As well, though the Landlord referred to Exhibits “A” through “I” as their evidence in the hearing, they did not provide evidence to the Residential Tenancy Branch in this fashion.

For this reason, I dismiss the Landlord's Application for an Order of Possession, without leave to reapply. With the tenancy already ended, there was no need for an Order of Possession in this scenario. The Landlord made no move to withdraw or otherwise amend their claim; therefore, I grant no reimbursement of the Application filing fee.

Conclusion

I dismiss the Tenant's Application in its entirety, without leave to reapply.

I dismiss the Landlord's Application in its entirety, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: December 12, 2022

Residential Tenancy Branch