



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPR, OPC, FFL

Introduction

On October 6, 2022 the Applicant applied for the following:

1. an Order of Possession for unpaid rent and for cause, *per* ss. 46, 47, 55 of the *Residential Tenancy Act* [the 'Act']; and
2. a monetary order to recover her \$100 filing fee for this application, *per* s. 72 (1) of the Act.

The hearing began on time at 1100 hours on 21 February 2023. Only the Applicant called in to the hearing.

During the hearing the Applicant withdrew their request for the filing fee.

Issues

Was the Respondent notified of this hearing?

Did the Applicant serve the Respondent with an effective notice to end tenancy?

Background and Evidence

Respondent's Address for Service

In their application to the Residential Tenancy Branch [the 'RTB'], the Applicant twice wrote the address where they say the Respondent resides. Both times, they wrote the

address with a street name and the number of the House and specified the 'site/unit' as, 'downstair left side door' [the 'Unit'].

The Applicant told me that they recorded the Respondent's address in this manner because there are two other tenants renting separate units in that House, and so they felt it was important to clarify which of the three units was the subject of this dispute.

Notice of Hearing

Because the Respondent did not participate in this hearing, I asked the Applicant what had the Applicant done to let the Respondent know that this hearing was happening?

The Applicant said that they sent the Hearing Notice to the Respondent *via* registered mail. In support of this, they provided a photo of an envelope marked with registered postage. This envelope bore the name of the Respondent, and showed the address of the House – but not the Unit.

The Applicant agreed that the address on the envelope was not the specific address of the Unit as written in their application: in particular, they did not include the phrase, 'downstair left side door'.

The Applicant did not offer any supporting documents from Canada Post indicating that the envelope had indeed been delivered to the House, let alone to the Unit or to the Respondent.

Notice to End Tenancy

The Applicant told me that they had an agreement to rent the Unit to the Respondent for \$700.00 *per* month. The Applicant said that the basis of this agreement was an advertisement they posted to a community Website. The Respondent, according to the Applicant, answered this advertisement, and agreed to rent the Unit. At the hearing, the Applicant did not provide a copy of this advertisement. They also did not allege any tenancy agreement that complied with section 13 of the Act.

The Applicant said that sometime in September last year (they couldn't recall when) they went to the Unit and spoke with the Respondent. During this conversation, the Applicant told the Respondent they were being evicted by giving the Respondent a print-out of an e-mail dated 9 September 2022 ['E-mail'].

The Applicant said that, earlier, they had sent this E-mail to a *different* tenant in the House, but had addressed the body of the E-mail to the Respondent. The Applicant sent the E-mail to a different tenant because they did not have an e-mail address for the Respondent, and they hoped the other tenant would pass on the E-mail.

The E-mail begins with, 'This is an eviction letter for you. You need to move out (vacate the house) on September 30, 2022, for the reason of not paying rent since June 1, 2022 until September 1, 2022.' It goes on to read that the Respondent owes the Applicant money, which the Respondent promised to pay, but has not.

The Applicant agreed that they did not use the form of notice approved by the RTB to end a tenancy. Instead, the Applicant relied solely on this E-mail as their notice to the Respondent to end the tenancy [the 'Eviction Notice'].

The Applicant told me that she had the Respondent sign the print-out of the E-mail, and indeed a handwritten name appears at the bottom of the document.

The Applicant argues that this E-mail is sufficient for an Eviction Notice.

Analysis

Service of Hearing Notice

Section 89 (2) of the Act details how a respondent must be served with a Hearing Notice. It allows an applicant to send a copy by registered mail to the address *at which the tenant resides* (emphasis added).

The Applicant sent the Hearing Notice only to the House, and not to the actual Unit - *as specified by the Applicant in their application* - where the Respondent resides. The Hearing Notice may very well have reached the House. But I have no indication that the notice was delivered to the Unit that is the subject of this dispute.

The Applicant themselves believed that specifying the Unit address was important. They did not merely use the street address of the House in their application: they specified which rental unit at that address was being occupied by the Respondent. Yet they failed to specify this Unit when they attempted to serve the Hearing Notice. As this application seeks to force the Respondent to move out of the Unit, I will not consider this

application without firmer indications that the Hearing Notice was delivered to the Unit that is the subject of this dispute. I need assurances that the Hearing Notice got to the right place and the Applicant couldn't provide any such assurances.

Accordingly, I find that the Applicant failed to properly serve the Respondent with notice that they have applied for an order of possession. The Respondent is entitled to hear the claim against them and respond, thus I cannot proceed with adjudication of the application.

Note to Applicant: Effectiveness of Notice to End Tenancy

A landlord cannot lawfully end a tenancy for unpaid rent or cause without serving to the tenant a properly completed form [#RTB-30 One Month Notice to End Tenancy For Cause or End of Employment](#) or [#RTB-33 10 Day Notice to End Tenancy For Unpaid Rent or Utilities](#).

Conclusion

I dismiss this application without leave to re-apply.

I make this decision on authority delegated to me by the Director of the RTB *per* section 9.1(1) of the Act.

Dated: 3 March 2023

Residential Tenancy Branch