



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant: CNR, CNE, LRE, LAT, OLC, FFT
Landlord: OPC-DR, FFL

Introduction

This was a cross application hearing that dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46;
- cancellation of the One Month Notice to End Tenancy for End of Employment, pursuant to section 48;
- an Order to restrict or suspend the landlord's right to enter, pursuant to section 70;
- an Order for the landlord to comply with the *Act*, regulation, and/or the tenancy agreement, pursuant to section 62;
- authorization to change the locks, pursuant to section 31; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

This hearing also dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for Cause, pursuant to sections 47 and 55; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

Landlord A.S. (the "landlord"), the landlord's assistant and a witness for the landlord attended the hearing for the landlord. The landlord did not call the witness.

The tenant and the tenant's agent attended the hearing for the tenant.

Preliminary Issue- Service

The tenant and the tenant's agent testified that landlord was served with the tenant's application for dispute resolution via email on November 20, 2023. Both parties agree that the tenant did not have a written email service agreement with the landlord. The landlord testified that she did not receive the tenant's application for dispute resolution.

Without a written e-mail service agreement, service via email is not permitted under section 88 of the Act. I find that the tenant did not serve the landlord in accordance with the Act. I accept the landlord's testimony that she did not receive the tenant's application for dispute resolution. The tenant's application is dismissed with leave to reapply for failure to serve in accordance with the Act. Leave to reapply is not an extension of any applicable limitation period.

The tenant testified that she did not know she was required to serve her evidence on the landlord and did not serve her evidence on the landlord.

The Notice of Dispute Resolution Proceeding document provided to the tenant states:

The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.

Section 3.14 of the Residential Tenancy Branch Rules of Procedure (the "*Rules*") state that evidence must be received by the respondent and the Residential Tenancy Branch directly not less than 14 days before the hearing.

I find that the tenant was clearly advised that she was required to serve her evidence on the landlord and to provide proof of that service. I find that the tenant did not comply with Rule 3.14 of the *Rules*. I find that it would be unfair to the landlord to consider documents that were not served on her in accordance with the Act. The tenant's evidence is therefore excluded from consideration.

The landlord testified that the tenant was served with her application for dispute resolution and evidence via registered mail on November 21, 2023. A Canada Post receipt for same was entered into evidence. The landlord testified that she checked this morning and that the package was delivered. The Canada Post website states that the above described mailing was delivered on November 23, 2023. The tenant testified that she did not receive the above mailing.

Based on the landlord's testimony, the registered mail receipt and the Canada Post website, I find that the landlord served the tenant in accordance with sections 88 and 89 of the Act. I find that the tenant was deemed served with the landlord's application for dispute resolution and evidence in accordance with sections 89 and 90 of the Act. I accept the landlord's evidence for consideration.

Issues to be Decided

- Are the landlords entitled to an Order of Possession for Cause?
- Are the landlords entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to the documentary evidence of the landlord and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts:

- This tenancy began on January 15, 2023 and is currently ongoing,
- monthly rent in the amount of \$2,750.00 is payable on the first day of each month,
- a security deposit of \$1,375.00 was paid by the tenant to the landlord.

A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that she posted a One Month Notice to End Tenancy for Cause dated October 27, 2023 (the "First One Month Notice") on the tenant's door on October 27, 2023. No proof of service documents for same were entered into evidence. The landlord testified that she entered into evidence photographs of the First One Month Notice posted to the tenant's door. The photographs entered into evidence show a One Month Notice dated November 13, 2023 posted to the tenant's door, but not the First One Month Notice posted to the tenant's door.

The landlord testified that after she posted the One Month Notice on the tenant's door, the tenant told her that she did not receive it so she posted a second One Month Notice

on the tenant's door on November 9, 2023 (the "Second One Month Notice"). The landlord testified that the tenant then told her that she spelt the tenant's name incorrectly on the Second One Month Notice so she posted a third One Month Notice to End Tenancy for Cause dated November 13, 2023 (the "Third One Month Notice") on the tenant's door on November 13, 2023.

The tenant testified that she did not receive the First One Month Notice dated October 27, 2023. The only notice to end tenancy the landlord applied to obtain an Order of Possession from was the One Month Notice dated October 27, 2023.

Analysis

The landlords did not provide any proof of service documents pertaining to the First One Month Notice and the tenant testified that she did not receive it. I find that the landlords have not proved, on a balance of probabilities, that the tenant was served with the First One Month Notice in accordance with the Act. I therefore find that the First One Month Notice is cancelled and of no force or effect.

As the landlords did not apply for an Order of Possession pursuant to the Second One Month Notice or the Third One Month Notice, I find that I am not able to adjudicate the enforceability of either notice to end tenancy.

As the landlords were not successful in this application for dispute resolution, I find that in accordance with section 72 of the Act, the landlords are not entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

The tenant's application for dispute resolution is dismissed with leave to reapply.

The landlords' application for dispute resolution is dismissed without leave to reapply.

This tenancy will continue until ended in accordance with the Act.

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: December 14, 2023

Residential Tenancy Branch