



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

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

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Preliminary Issue - Service of Documents

Section 52 of the *Act* provides the following requirements requiring the form and content of notices to end tenancy:

52 *In order to be effective, a notice to end a tenancy must be in writing and must*

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form...

The landlord entered into written evidence a number of letters and notices to the tenant requesting an end to this tenancy. Most of these were not on the Residential Tenancy

Branch (RTB) forms referred to in section 52(e) of the *Act* that would give legal effect to these notices. Whether or not she has rented out premises to someone else, the only way that the landlord can end a tenancy is in accordance with the provisions of the *Act*. The only notice on an RTB form issued by the landlord was a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) that the landlord testified that she served to the tenant on December 26, 2013, by sliding it under the tenant's door. She testified that this is the usual way that she provides mail to the tenant. The tenant testified that he never received the landlord's 10 Day Notice.

As I noted at the hearing, I find that the landlord has not served the tenant with the 10 Day Notice in one of the following ways for serving such documents required by section 88 of the *Act*.

88 *All documents, other than those referred to in section 89 [special rules for certain documents], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:*

(a) by leaving a copy with the person;...

(c) by sending a copy by ordinary mail or registered mail to the address at which the person resides...

(d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;

(e) by leaving a copy at the person's residence with an adult who apparently resides with the person;

(f) by leaving a copy in a mail box or mail slot for the address at which the person resides...

(g) by attaching a copy to a door or other conspicuous place at the address at which the person resides...;

(h) by transmitting a copy to a fax number provided as an address for service by the person to be served;

(i) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];

(j) by any other means of service prescribed in the regulations...

Sliding documents under a door is not one of the allowed ways to serve documents set out in section 88 of the *Act*. For this reason, I find that the landlord has not served the tenant with the 10 Day Notice.

Section 89 of the *Act* establishes Special Rules for serving certain documents, including applications for dispute resolution for an Order of Possession or a monetary Order. Section 89(2) of the *Act* outlines the methods whereby an application for an order of possession can be served to a tenant.

(2) An application by a landlord under section 55 [order of possession for the landlord],... must be given to the tenant in one of the following ways:

(a) by leaving a copy with the tenant;

(b) by sending a copy by registered mail to the address at which the tenant resides;

(c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;

(d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;...

The landlord testified that she handed a copy of her dispute resolution hearing package to the tenant on January 16, 2014. The tenant said that she handed him the Notice of a Dispute Resolution Hearing on January 18, 2014, but nothing else. The landlord said that she may have been mistaken as to the date of her delivery of the hearing package to the tenant. She testified that she gave the tenant the entire hearing package, including a copy of her application and the RTB documents that are to be attached to that package. The tenant denied this and said that he was unaware of the details of the landlord's application and attended the RTB office to try to obtain more information regarding the landlord's application and his rights as a tenant.

At the hearing, the landlord testified that she intended to serve the tenant with a new notice to end this tenancy. She has already rented the entire rental property to another tenant, including the basement level of this building still occupied by the tenant and his family. The landlord realized that she may need to apply for dispute resolution again if the tenant does not agree to vacate the rental property. The tenant also has concerns about this tenancy and expressed an interest in submitting his own application to the RTB for the landlord's withdrawal of many features of this tenancy that were previously being provided to him. The tenant maintained that the landlord has removed doors and

given the new tenants of a recovery house upstairs access to portions of the basement area that he and his family had sole access to in the past.

By the end of this hearing and based on the questions asked by the tenant, it became apparent that the tenant did not have the landlord's mailing address. This information would have been provided in full on the copy of the landlord's application for dispute resolution had the landlord included a copy of her application in the hearing package served to the tenant.

On a balance of probabilities, I find it more likely than not that the landlord has not served the tenant with a complete dispute resolution hearing package so as to enable the tenant to know the case against him and have the landlord's application for dispute resolution considered at this hearing. As I am not satisfied that a complete hearing package including the landlord's application has been served to the tenant in accordance with section 89 of the *Act*, I dismiss the landlord's application with leave to reapply.

Conclusion

I dismiss the landlord's application with leave to reapply. This tenancy continues.

As the landlord has been unsuccessful in his application, I dismiss her application to recover her filing fee from the tenant without leave to reapply.

In closing, I strongly advise the landlord to visit the Burnaby Office of the RTB and speak with a representative of the RTB to obtain information regarding her duties and responsibilities as a landlord. I caution the landlord that any action she may take with respect to this tenancy can only be conducted in accordance with the *Act*, which establishes rights and responsibilities for both landlords and tenants.

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: February 13, 2014

Residential Tenancy Branch

