



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNE, MNDC, OLC, LRE, OPT, FF

Introduction

The tenant applies to cancel a Notice to End Tenancy for end of employment. It apparent however that she meant to apply to cancel a one month Notice to End Tenancy for cause dated August 1, 2014 and I amend the claim accordingly. Her application was brought on August 15, 2014. It was served on the landlord by registered mail sent August 19, 2014 to the landlord's address, the upper portion of the same home. The letter went "unclaimed by recipient" according to the records of Canada Post, and was returned to sender.

The tenant claims that on returning home on September 1, 2014 after a night away, she found that all her belongings had been removed from her rental unit and placed in a common hallway/foyer in the basement of the home. She had been locked out. There was a new lock on the door. She hired a U-Haul truck and moved her belongings.

She testifies she has not been served with an order of possession nor knows of any application for one having been made against her.

On September 2, 2014 the tenant amended her application to include a claim for an order of possession, an order that the landlord comply with the law and for compensation for the damaged and loss suffered by the landlord's actions. That amended claim was served on the landlord by attaching it to his door at the upstairs premises where he lives.

The landlord did not attend the hearing.

Section 88 of the *Residential Tenancy Act* (the "Act") provides that an application can be served on a landlord, among other ways, by attaching it to a door to his premises. Section 89 however, requires a monetary application to be served on a landlord in person or by registered mail. Attaching the amended application to a door was not proper service.

I find that the landlord has been served with the original application but that he has not been properly served with the amended application claiming compensation.

When a tenant applies to cancel a Notice to End Tenancy, the initial burden of proof is on the landlord to show that there were good grounds for the Notice. By failing to attend this hearing the landlord has failed to substantiate the Notice and I hereby cancel it. As a result, the tenancy continued and did not end on the August 31, 2014 date in the Notice to End Tenancy.

The tenant indicates that she does not want to move back into the rental unit and so declines an order of possession. Nor does she require a compliance order.

She seeks compensation for the wrongful eviction. As that amended claim has not been duly served, I dismiss that portion of her claim, with leave to re-apply.

The tenant is entitled to recover her \$50.00 filing fee for this application and there will be a monetary order against the landlord for \$50.00 in that regard.

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: October 10, 2014

Residential Tenancy Branch

