



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Capreit
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MNDC, MNR, FF

Introduction, Preliminary, and Procedural Matters

This hearing was convened as the result of the landlord's application for dispute resolution under the Residential Tenancy Act ("Act"). The landlord applied for an order of possession for the rental unit pursuant to a 1 Month Notice to End Tenancy for Cause ("Notice"), a monetary order for money owed or compensation for damage or loss and unpaid rent, and for recovery of the filing fee paid for this application.

The landlord's agent (hereafter "landlord") appeared; the respondent/tenant did not appear.

The landlord provided oral and documentary evidence that they served the two tenants listed on the written tenancy agreement with their application for dispute resolution and notice of hearing by registered mail on May 28, 2015 to the address of the rental unit. I note that only one tenant, "CN", was listed on the landlord's application as a respondent. The landlord stated that the registered mail was returned to them, unclaimed.

The landlord stated that he believed that CN either never lived in the rental unit or was there for only a short time after the tenancy began on February 1, 2015, confirming that she did not live in the rental unit at the end of the tenancy. The landlord confirmed that the other tenant listed on the written tenancy agreement submitted into evidence, "TM", vacated the rental unit on June 1, 2015, and I therefore amended their application to exclude a request for an order of possession for the rental unit.

Analysis and Conclusion

As the landlord listed only CN as a respondent, I was only able to consider the landlord's application against that tenant.

Section 89(1) of the Act requires that an application for dispute resolution be served upon the respondent (the tenant in this case) by leaving it with the person, by sending a copy by registered mail to the address at which the person resides or if a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant.

Section 90 of the Act states that documents served by registered mail are deemed delivered five days later. Thus the tenant/respondent was deemed to have received the landlord's application mailed on May 28, 2015, on June 2, 2015; however, the unlisted respondent and only remaining tenant, TM, vacated the rental unit on June 1, 2015, and CN, the respondent, had not lived in the rental unit for a long period of time, if ever, according to the landlord.

Therefore, on a balance of probabilities and insufficient evidence by the landlord, I cannot conclude that the respondent/tenant CN or tenant TM were served with the landlord's notice of hearing and application for dispute resolution as required by Section 89(1) of the Act as the respondent CN did not currently live in the rental unit and the tenant TM had vacated the rental unit by the effective service date of the landlord's application.

I therefore dismiss the landlord's application for monetary compensation, with leave to reapply.

Leave to reapply does not extend any applicable time limitation deadlines.

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: July 10, 2015

