



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TRANSPACIFIC REALTY ADVISORS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNR OPR RP ERP RR MNDCT FF

Introduction

Both parties attended the hearing and gave sworn testimony. The 10 Day Notice to End Tenancy is dated June 2, 2018 to be effective June 12, 2018 and the tenant confirmed it was served by posting it on the door and she received the landlord's Application for Dispute Resolution by registered mail. The tenant /applicant gave evidence that they served their Application for Dispute Resolution, evidence and amendment by registered mail. The landlord denied receiving the Application, Amendment or most of the evidence. They said they received copies of a bank statement only by registered mail. The tenant supplied two tracking numbers which I researched online. The first one corresponded with the date the landlord said they received the bank statements and the postal website said it had no record of the second number. I find the landlord's documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. I find insufficient evidence that the tenant's documents were legally served to the landlord. The landlord applies pursuant to sections 46, 55 and 67 of the Act for an Order of Possession and a monetary order for rental arrears and filing fee.

The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for unpaid rent pursuant to section 46; and
- b) To obtain a rent rebate or compensation for repairs not done and losses incurred due to lack of repair.

Issue(s) to be Decided:

Is the landlord entitled to an Order of Possession and a monetary order for rental arrears and filing fee?

Did the tenant legally serve the Application for Dispute Resolution and evidence? Is the tenant entitled to any relief? If so, has the tenant proved on the balance of probabilities that they are entitled to compensation or a rent rebate and if so, in what amount?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced October 1, 2017 on a fixed term lease to September 30, 2018, rent is \$1295 a month plus parking and a security deposit of \$647.50 was paid.

The landlord served the 10 Day Notice to End Tenancy for \$400 of rent owed for June 2018 was outstanding and the tenant refused to pay it. They confirmed it was still unpaid and request an Order of Possession effective August 31, 2018 to allow the tenant time to move. They request a Monetary Order for \$425 (including \$25 late fee) plus the filing fee.

The tenant claims substantial compensation from the landlord of \$4000 plus her filing fee. She states her refrigerator and freezer broke down and because of this, her personal food and food she purchases for her business as a nutritional consultant was lost. She provided photographic evidence of food and receipts piled together on a table. They were illegible to me. The landlord said they were never served with this evidence and could not read anything in the photographs of the tenant. The tenant alleges everything was sent to the commercial landlord. The landlord noted that they were first notified of the refrigerator problem on May 13 through an email to M., the handyman. He called appliance repair and they came out May 15, 2018, determined they could not fix it and delivered a new refrigerator on May 16, 2018. The tenant agreed with these dates.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

Section 26 of the Act provides a tenant must pay rent when due whether or not the landlord meets their obligations under the Act. It was not disputed that the tenant never paid the outstanding \$400 of rent from June 2018. I dismiss her application to cancel the Notice to End Tenancy for unpaid rent. I find the landlord is entitled to an Order of Possession effective August 31, 2018 as requested and a Monetary Order for \$525 including their filing fee.

In respect to the tenant's application, I find insufficient evidence that she ever legally served the landlord with her Application or Amendment or Evidence. Her assertion in the hearing that "they know it all anyway" is not legal service of documents. Rule 3 of the Residential Tenancy Rules of Procedure provide the Application and evidence must be served to the respondent whether or not the landlord was aware of the problems. I searched the entire tenant's evidence online and found no evidence of service was submitted and the tracking numbers she gave me by telephone were not sufficient evidence of service as one could not be found and the other was only bank statements according to the landlord. I find the landlord filed their Application on June 11, 2018 as a Direct Request which cannot be heard if the tenant has filed an Application and they did not refer to the tenant's application. I find this supports the landlord's statement that they received no application or evidence from the tenant which the tenant filed on June 6, 2018. I dismiss the tenant's application with leave to reapply.

I found much of the tenant's evidence was illegible online. Therefore, I advise the tenant to consult the requirements for digital documents as set out in the Residential Tenancy Policy Guideline 42 as follows and available online:

E. DIGITAL COPIES OF WRITTEN DOCUMENTS

Written documents being used as evidence should be submitted as a digital copy, when possible. Parties may opt to convert the format of their written documents by scanning or taking photographs of the document. In the absence of a scanner, parties may consider using a scanner application to aid in digitizing their documents. Scanner applications are typically used on mobile phones or tablets and help improve the image quality of documents being scanned with the device's camera.

When converting documents to a digital format, it is critical to maintain the image quality and integrity of the document to make sure that it is clear and understandable. If the evidence is unintelligible or unclear, an arbitrator may require the party who submitted the document to re-submit it or the evidence may not be considered.

G. DIGITAL PHOTOGRAPHS

To be considered, the party submitting digital photographs must demonstrate that:

☐ *the photograph fairly and accurately represents the facts; and*

☐ *there is no intention to mislead.*

When a landlord or tenant submits a digital device that is full of images, they must satisfy the Residential Tenancy Branch that the above criteria are met with respect to each

As with any digital evidence, the party submitting the photographs must take steps to ensure that all parties can access or view them and that the photos are clear, legible and numbered. As with all digital evidence, a written description of the numbered photographs should be submitted with the printed evidence.

Conclusion:

I find the landlord entitled to an Order of Possession effective August 31, 2018 as requested and a Monetary Order for \$425 plus the filing fee of \$100 (total of \$525).

I dismiss the Application of the tenant due to insufficient proof of service and give her leave to reapply.

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 25, 2018

Residential Tenancy Branch