



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession, and a monetary order for unpaid rent, damages and losses due to strata bylaw fines, and the filing fee.

The Landlord provided affirmed testimony that they served the Tenant, with the Application for Dispute Resolution and Notice of Hearing on December 28, 2011, by posting these documents on the Tenant's door.

The Tenant did not participate in the conference call hearing.

The Landlord testified that the Tenant owes them rent for several month, and has also been causing noise disturbance to the other building residents since October, resulting in several fines to the Landlord from the Strata. The Landlord stated that the Tenant is still residing in the rental unit although he is not answering his door. The Landlord explained that the Tenant did not answer his door when they went the rental unit to serve the Application for Dispute Resolution and the Notice of Hearing on December 28, 2011, so they posted these on the door of the rental unit.

The Notice of Hearing and Application for Dispute Resolution package were made available to the Landlord on December 28, 2011. Section 59(3) of the Residential Tenancy Act, the "Act", requires that the applicant serve the respondent with the Application, which includes the Notice of Hearing, within three days. Section 89 of the Act, provides specific rules for the service of the Application for dispute resolution package. Section 89 states:

Special rules for certain documents

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;

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

(2) An application by a landlord under section 55 [*order of possession for the landlord*], 56 [*application for order ending tenancy early*] or 56.1 [*order of possession: tenancy frustrated*] 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;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

(3) A notice under section 94.21 [*notice of administrative penalty*] must be given in a manner referred to in subsection (1).

The Landlord stated that they need a monetary order as soon as possible as they have payments to make and the Tenant is several months behind in the rent, and the Landlord wants the Tenant out of the rental unit. While the Landlord indicated that they were willing to withdraw the strata fine portion of their claim at this time, the Landlord indicated that they were not willing to sever the monetary part of their claim for unpaid rent from the request for possession of the rental unit.

The Landlord served the Application and Notice by posting it on the Tenant's door, rather than by registered mail or personal service. As the Landlord's Application is for a monetary order combined with a request for an order of possession, I find that the Landlord failed to serve these documents in accordance with section 89(1) of the Residential Tenancy Act (the "Act").

The Landlord's Application is dismissed with leave to reapply. The Landlord may apply for a Direct Request if they wish to pursue the unpaid rent and order of possession issue on an expedited basis.

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: January 13, 2012.

Residential Tenancy Branch