



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, OPB, MNSD FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession, to retain the Tenant's security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. It is apparent from the details of the dispute that the Landlord is seeking compensation for unpaid rent and for damages.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent/damages; to retain the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The female Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant at the rental unit, via registered mail, on September 06, 2012. The Landlord submitted Canada Post documentation that corroborates this statement. The female Agent for the Landlord stated that the Tenant had vacated the rental unit by August 31, 2012.

Analysis

The purpose of serving the Application for Dispute Resolution and the Notice of Hearing to tenants is to notify them that a dispute resolution proceeding has been initiated and to give them the opportunity to respond to the claims being made by the landlord. When a landlord files an Application for Dispute Resolution in which the landlord has applied for a monetary Order, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution in compliance with section 89(1) of the *Residential Tenancy Act (Act)*.

Section 89(1) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution in one of the following ways:

- (a) by leaving a copy with the person;
- (c) by sending a copy by registered mail to the address at which the person resides;
- (d) by sending a copy by registered mail to a forwarding address provided by the tenant;
or
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

The Landlord submitted no evidence to show that the Tenant was personally served with the Application for Dispute Resolution or Notice of Hearing and I therefore find that she was not served in accordance with section 89(1)(a) of the *Act*.

The Agent for the Landlord stated that the rental unit had been vacated by the time the Application for Dispute Resolution and Notice of Hearing were mailed to the rental unit. As the Tenant was not longer residing at the rental unit when the documents were mailed, I cannot find that the Tenant was served in accordance with section 89(1)(b) of the *Act*.

The Landlord submitted no evidence to show that the Application for Dispute Resolution or Notice of Hearing was mailed to a forwarding address provided by the Tenant and I therefore find that she was not served in accordance with section 89(1)(d) of the *Act*.

There is no evidence that the director authorized the Landlord to serve the Application for Dispute Resolution to the Tenant in an alternate manner, therefore I find that she was not served in accordance with section 89(1)(e) of the *Act*.

The Landlord submitted no evidence to cause me to conclude that the Tenant received the Application for Dispute Resolution, therefore I cannot conclude that the Application has been sufficiently served pursuant to sections 71(2)(b) or 71(2)(c) of the *Act*.

When a landlord files an Application for Dispute Resolution in which the landlord has applied for an Order of Possession, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution in compliance with section 89(2) of the *Act*.

In addition to the service methods previously addressed, section 89(2) of the *Act* stipulates that a landlord may also serve a tenant with an Application for Dispute Resolution in one of the following ways:

- (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 submitted no evidence to show that the Application for Dispute Resolution or Notice of Hearing were left at the Tenant's residence with an adult who apparently resides with the Tenant and I therefore find that she was not served in accordance with section 89(2)(c) of the *Act*.

The Landlord submitted no evidence to show that the Application for Dispute Resolution or Notice of Hearing were attaching to a conspicuous place at the address at which the tenant resides and I therefore find that she was not served in accordance with section 89(2)(d) of the *Act*.

Conclusion

As the Landlord has failed to establish that the Tenant has been served with the Application for Dispute Resolution and the Notice of Hearing in accordance with section 89 of the *Act*, I find that I am unable to proceed with the hearing in the absence of the Tenant. The Landlord's Application for Dispute Resolution is dismissed with 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: October 04, 2012.

Residential Tenancy Branch