



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF, O

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The tenant did not attend the hearing, which lasted approximately 18 minutes. The landlord and his agent, KA, (collectively "landlord") attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that the tenant was served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated February 12, 2015 ("10 Day Notice"), on the same date, by way of posting to the tenant's rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on February 15, 2015, three days after its posting.

During the hearing, the landlord withdrew his application for an order of possession. Accordingly, this portion of the landlord's application is withdrawn.

Preliminary Issue - Service of Landlord's Application

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package ("Application") on February 24, 2015, by way of posting to the tenant's rental unit door. In accordance with sections 89 and 90 of the Act, I find that the tenant was deemed served with the landlord's Application on February 27, 2015, three days after its posting.

Analysis – Service of Landlords' Application

Section 89 of the Act establishes the following special rules for service of certain documents, which include an application for dispute resolution. Section 89(2) permits service of an application by way of posting to the door, only for an order of possession application. However, a monetary application may only be served in accordance with section 89(1), which does not permit service by way of posting to the door. Section 89(1) states the following:

89(1) An application for dispute resolution...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].*

The landlord applied for a monetary order for unpaid rent, damage, loss and to retain the tenant's security deposit. The landlord has not served the tenant in accordance with section 89(1) of the Act. Accordingly, the monetary portion of the landlord's Application is dismissed with leave to reapply. **This liberty to reapply is not an extension of any applicable limitation period.**

As the landlord was unsuccessful in his Application, he is not entitled to recover the \$50.00 filing fee from the tenant. The landlord must bear the cost of his own filing fee.

Conclusion

I dismiss the landlord's Application for a monetary order for unpaid rent, a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, with leave to reapply.

The landlord's Application for an order of possession is withdrawn.

The landlord's Application to recover the \$50.00 filing fee is dismissed without leave to reapply. The landlord must bear the cost of his own filing fee for this Application.

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: March 23, 2015

Residential Tenancy Branch

