



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FIRSTSERVICE RESIDENTIAL BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

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

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("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 this hearing, which lasted approximately 13 minutes. The landlord's agent, GZ ("landlord") attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that she is the property manager for the landlord company named in this application and that she had authority to represent the landlord company as an agent at this hearing.

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 July 2, 2015, by way of registered mail. The landlord provided a copy of a Canada Post receipt and tracking number with her Application. The landlord testified that the package was returned back to the landlord and the Canada Post website confirms this information.

The landlord testified that the tenant was served with the Application at the rental unit address. The landlord testified that it is the landlord's practice to send hearing documents by way of registered mail to tenants. The landlord stated that the last communication with the tenant was by way of an email sent by the landlord to the tenant on April 2, 2015. The landlord testified that the strata company performed an audit for the FOB keys to the rental unit a "couple of months ago" and it was determined that the tenant's FOB keys were deactivated, such that the tenant would need to notify the strata company each time he needed to enter the rental unit. The landlord stated that she entered the tenant's rental unit on July 10, 2015 after posting a notice to enter and the unit looked "abandoned" as there was food in the fridge from April 2015. The landlord stated that the tenant had not paid rent since April 2015, which is the same time that the landlord company assumed this tenancy and control of the rental unit property.

Analysis – Service of Landlord's Application

Section 89(1) of the *Act* outlines the methods of service for an application for dispute resolution, which reads in part as follows (emphasis added):

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;...

*(c) by sending a copy by registered mail to the **address at which the person resides** ...;*

(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].

I find that the landlord has failed to sufficiently demonstrate that the tenant was served in accordance with section 89(1) of the *Act*.

The tenant did not attend this hearing. The landlord did not provide sufficient evidence to show that the tenant resides at the rental unit address. The landlord's last communication with the tenant was in early April 2015 by way of email. The landlord performed a FOB keys audit "a couple of months ago." The Application was filed around this time on June 29, 2015. The landlord was aware that the tenant's keys were deactivated and the tenant was required to contact the strata company to access the rental unit. The landlord entered the tenant's rental unit and determined that it was "abandoned," showing evidence of food left behind from April 2015.

Accordingly, I am unable to confirm that this is an address at which the tenant resides in accordance with section 89(1)(c) of the *Act*. For the above reasons, I am not satisfied that the tenant was served with the landlord's Application in accordance with section 89(1) of the *Act*. At the hearing, I advised the landlord that I was dismissing the landlord's entire Application, except for the filing fee recovery, with leave to reapply. I advised the landlord during the hearing that if she decided to file a new application for dispute resolution, that she would be required to pay a new filing fee.

Throughout this hearing and particularly when giving my oral reasons, the landlord became increasingly upset and repeatedly interrupted me. I warned the landlord several times about her conduct during this conference. However, the landlord continued with the same behaviour, despite my warnings. The landlord frequently repeated the same questions and comments throughout the hearing. The landlord continuously asked whether my decision was a "joke." Despite my attempts to clarify that this was a serious, legal proceeding and not a "joke," the landlord continued to ask the same questions and make the same comments. Subsequently, I confirmed the landlord's mailing information and concluded the hearing with notice to the landlord.

Conclusion

The landlord's Application for an order of possession for unpaid rent, a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, and to retain the tenant's security deposit, is dismissed with leave to reapply.

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

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: August 27, 2015

Residential Tenancy Branch