



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MNR, MND, 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 and for breach of an agreement, pursuant to section 55;
- a monetary order for unpaid rent and for damage to the rental unit, pursuant to section 67; 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 24 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Preliminary Issue – Service of Landlord's Application

The landlord testified that the tenant was served with the landlord's original application for dispute resolution hearing package on December 11, 2015 and the landlord's amended application on December 18, 2015, both by way of registered mail to the tenant's P.O. Box address (collectively "Application"). The landlord provided Canada Post receipts and tracking numbers with his Application. The landlord confirmed that both packages were returned to him because it was unclaimed by the tenant.

The landlord stated that he obtained the tenant's P.O. Box address in January 2015, before she began renting the subject rental unit. The landlord did not provide documentary evidence to show that the tenant provided the address to him. The landlord confirmed that the tenant vacated the rental unit sometime in December 2015. The landlord stated that he last spoke with the tenant on December 11, 2015, by way of email, but no reference to a forwarding address was provided by the tenant in the email. The landlord provided a copy of the email with his Application.

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:

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].

The landlord has failed to sufficiently demonstrate that the tenant was served with the landlord's Application in accordance with section 89(1) of the *Act*. The tenant did not attend this hearing. The landlord did not provide any documentary evidence to show that the tenant provided this forwarding address to the landlord after she vacated the rental unit or around the time that the landlord filed his Application. The landlord confirmed that the address was provided in January 2015, more than a year before this hearing date. Although the landlord had a copy of a December 2015 email purportedly from the tenant, no forwarding address was indicated there. Moreover, both of the landlord's Application packages were returned to him. As I am unable to confirm that this was a forwarding address provided by the tenant in accordance with section 89(1)(d) of the *Act*, I am not satisfied that the tenant was properly served with the landlord's Application.

At the hearing, I advised the landlord that I was dismissing his entire application with leave to reapply, except for the recovery of the filing fee. I notified the landlord that he would be required to file a new application and pay a new filing fee if he wished to pursue orders against the tenant. I also told the landlord that he would be required to prove service, including documentary evidence where possible, regarding how he obtained the tenant's forwarding address, at the next hearing. I notified the landlord that he could apply for an order for substituted service to serve the tenant by another method outside of section 89 of the *Act*, if required. I notified the landlord that he could consult with an information officer at the Residential Tenancy Branch, if he required more information.

Throughout this hearing and particularly when giving my oral reasons, the landlord became increasingly upset and repeatedly interrupted me. I warned the landlord about his conduct and the fact that it was inappropriate. However, the landlord continued with the same behaviour, despite my warnings. After issuing my reasons, the landlord unexpectedly disconnected from the conference.

Conclusion

The landlord's Application for an order of possession for unpaid rent and for breach of an agreement and a monetary order for unpaid rent and for damage to the rental unit, is dismissed with leave to reapply.

The landlord's Application to recover the \$100.00 filing fee 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: February 02, 2016

Residential Tenancy Branch

