



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR OPC MNR FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlord on September 12, 2016. The Landlord had originally filed seeking an Order of Possession for unpaid rent and for cause; a \$2,230.00 Monetary Order for unpaid rent and/or utilities; plus recovery of the filing fee.

On October 26, 2016 the Landlord filed an amended application seeking to increase their Monetary Order request to \$4,699.00.

The hearing was conducted via teleconference and was attended by the Landlord, her spouse, and their legal counsel (Counsel). No one was in attendance on behalf of the Tenant.

Issue(s) to be Decided

- 1) Has the Landlord proven service of their application for Dispute Resolution?
- 2) Has the Landlord proven service of their amended application for Dispute Resolution?
- 3) Has the Landlord proven entitlement to a monetary order?

Background and Evidence

Counsel submitted that the Landlord's September 12, 2016 application for Dispute Resolution and Notice of hearing documents had been served to the Tenant via registered mail on September 20, 2016. That registered mail package was addressed to the Tenant's rental unit address. The Tenant remained in possession of the rental unit until September 30, 2016.

Counsel stated they had obtained a sworn affidavit from a process server who made several attempts to serve the Tenant with copies of the Landlord's amended application for Dispute Resolution. When their attempts to meet up with the Tenant failed the process served posted copies of the amended application for Dispute Resolution to the rental unit door on October 31, 2016 at 11:47 a.m.

A hearing was conducted on September 26, 2016 regarding the Tenant's application to cancel the 10 Day Notice (That file number is referenced on the front page of this Decision). The Tenant's application was dismissed resulting in the Landlord being awarded an Order of Possession effective 2 days after service upon the Tenant.

The Landlord's application was not before the Arbitrator during the September 26, 2016 hearing. That being said, the Arbitrator made findings in her September 26, 2016 Decision that the Tenant had conceded he had not paid the outstanding August 2016 and September 2016 rent and cable totalling \$2,230.00 (\$1,100.00 rent + \$15.00 cable x 2).

Analysis

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

Section 67 of the Residential Tenancy Act states that without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 90(a) of the *Residential Tenancy Act* (the "Act") states that a document served by mail is deemed to have been received five days after it is mailed.

After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

Based on the undisputed evidence of the Landlord, I find that the Tenant was deemed served notice of the Landlord's September 12, 2016 application for Dispute Resolution and hearing documents on September 25, 2016, five days after they were mailed, pursuant to section 90(a) of the *Act*.

As per the aforementioned, I find the Tenant was sufficiently served notice of the Landlord's intent to recover the unpaid rent and cable fees. Accordingly, I grant the Landlord's application in the amount of **\$2,230.00**, pursuant to section 67 of the *Act*.

Residential Tenancy Branch Rules of Procedure 4.6 stipulates, in part, that copies of an amendment to an application for Dispute Resolution and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by section 89 of the *Residential Tenancy Act* and these Rules of Procedure. The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution and supporting evidence as required by the Act and these Rules of Procedure.

By their own submissions the amended application was not served upon the Tenant in accordance with section 89 of the *Act* (section 89 is list at the end of this Decision). Rather, the amended application was posted to the rental unit door 31 days after the Tenant had moved out and 31 days after the Landlord had regained legal possession and had changed the locks. Therefore, I conclude the amended application had not been served upon the Tenant in accordance with the Rules of Procedure or section 89 of the *Act*.

To find in favour of an application for monetary compensation I must be satisfied that the rights of all parties have been upheld by ensuring the respondents have been given proper notice to be able to defend their rights. As I have found the service of the amended application not to have been effected in accordance with section 89 of the *Act*, I dismiss the Landlord's amended application for the amounts in excess of those awarded above, with leave to reapply.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has succeeded with their initial application; therefore, I award recovery of the **\$100.00** filing fee, pursuant to section 72(1) of the Act.

The Tenant is hereby ordered to pay the Landlord the amount of **\$2,330.00** (\$2,230.00 + \$100.00), forthwith.

In the event the Tenant does not comply with the above order, The Landlord has been issued a Monetary Order in the amount of **\$2,330.00** which may be enforced through Small Claims Court upon service to the Tenant.

Conclusion

The Landlord was successful with their initial application and was granted a monetary order in the amount of \$2,330.00. The balance of the Landlord's amended application was dismissed with leave to reapply.

This decision is final, legally binding, and 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: November 03, 2016

Residential Tenancy Branch

The Residential Tenancy Act

Section 89(1) of the Act stipulates that 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*].

