



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for an Order of Possession for cause pursuant to section 55 and authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1:45pm in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30pm. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

Background and Evidence - Service of Landlord's Application

The landlord testified that he served the tenant with the Application for Dispute Resolution by dropping it off in the tenant's mail box on November 9, 2016. He did not provide any proof of service, nor did he have any witness testimony to confirm the service of the Application. In his testimony the landlord was uncertain about whether the tenant was properly served, or still residing at the residence. He did not make any other efforts to confirm the service or whether the tenant was still at that address.

Analysis – Service of Landlord's Application

Section 89 of the Act sets out how an Application for Dispute Resolution may be served:

Special rules for certain documents

89 (1) *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].*
- (2) An application by a landlord under section 55 [order of possession for the landlord], 56 [application for order ending tenancy early] or 56.1 [order of possession: tenancy frustrated] must be given to the tenant in one of the following ways:*
 - (a) by leaving a copy with the tenant;*
 - (b) by sending a copy by registered mail to the address at which the tenant resides;*
 - (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;*
 - (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents]...*

The tenant did not appear at this hearing. The evidence of the landlord is that he served the tenant with Application for Dispute Resolution hearing by dropping it off in the tenant's mailbox. The landlord was uncertain in his testimony that the tenant was served with the package, and or was aware of this hearing. The tenant is required to have notice of this Application in order to have an opportunity to respond, and therefore I dismiss the landlord's application with leave to reapply.

Conclusion

I dismiss the landlord's application 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: December 09, 2016

Residential Tenancy Branch