



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, O, FF

Introduction

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

- an order of possession for breach of an agreement, pursuant to section 55;
- other unspecified remedies; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 10 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 a copy of the landlord's application for dispute resolution hearing package on December 2, 2016, by way of registered mail. The landlord provided a Canada Post receipt and tracking number with his application.

The landlord claimed that he sent the application to a forwarding address provided by the tenant. He maintained that the tenant provided a written forwarding address to him on a letter after she ended her tenancy on November 30, 2016. He said that he did not provide a copy to the Residential Tenancy Branch ("RTB") because no one told him to. The landlord stated that he was still seeking an order of possession even though the tenant moved out, because the other tenant living there has not yet moved out.

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 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].*

I find that the landlord failed to provide sufficient evidence that the tenant was served with the landlord's application at an address at which she is residing or a forwarding address provided by her, in accordance with section 89(1) of the *Act*. The tenant did not attend this hearing. The landlord did not provide documentary evidence of the tenant's forwarding address, despite the fact that he had it in his possession prior to the hearing.

As the landlord failed to prove service in accordance with section 89(1) of the *Act*, I find that the tenant was not served with the landlord's application. At the hearing, I advised the landlord that I was dismissing his application with leave to reapply, except for the filing fee.

I notified the landlord that if he wished to pursue this matter further, he would have to file a new application and pay another filing fee. I notified the landlord that he would have to prove service at the next hearing and cautioned him to ensure that he named the proper parties for his application.

Conclusion

The landlord's application to recover the \$100.00 filing fee is dismissed without leave to reapply.

The remainder of the landlord's application is dismissed 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: January 10, 2017

Residential Tenancy Branch