



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, 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, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend the hearing, which lasted approximately 19 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.

The landlord initially testified that he served the tenant with the landlord's application for dispute resolution hearing package by way of registered mail on March 27, 2017. The landlord then provided me with a Canada Post tracking number for a different set of documents that were sent on March 11, 2017, according to the landlord's written evidence and the Canada Post website. When I notified the landlord that the tracking number did not match the date, he changed his testimony to state that he mailed the package on March 29, 2017. He then provided me with a different Canada Post tracking number, which indicated that the package was returned to sender. I provided the landlord with approximately 15 minutes during the hearing in order to look through his paperwork in order to find the above tracking numbers.

When I questioned the landlord as to what documents he served to the tenant, he stated that he served his application for dispute resolution and a direct request worksheet. When I questioned the landlord as to whether he filed a direct request application, which is a different process, he said that he did. When I told him that this was not a direct request proceeding, which is an ex parte process with no participatory hearing, he seemed confused by my comments and questions. I advised him that I had not received a direct request worksheet from him for this application.

Residential Tenancy Branch Policy Guideline 12 states the following, in part, with respect to proof of service by registered mail:

Proof of service by Registered Mail should include the original Canada Post Registered Mail receipt containing the date of service, the address of service, and that the address of service was the person's residence at the time of service, or the landlord's place of conducting business as a landlord at the time of service as well as a copy of the printed tracking report.

I find that the landlord has failed to sufficiently demonstrate that the tenant was served with his application in accordance with section 89 of the *Act*. The landlord was unable to provide a receipt to confirm service of his documents on March 29, 2017. The landlord changed his date of service from March 27 to March 29. The March 29 package of documents was returned to sender, according to the Canada Post website using the tracking number provided by the landlord. Further, the landlord may have served the wrong documents to the tenant, since this is not a direct request proceeding.

At the hearing, I advised the landlord that I could not confirm that the tenant was served with the correct documents for this application in accordance with section 89 of the *Act*.

I notified the landlord that his application was dismissed with leave to reapply, with the exception of the \$100.00 filing fee. I notified him that he would be required to file a new application and pay a new filing fee in order to pursue this matter further.

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: May 01, 2017