



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM, MNDC, FF, O

Introduction

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

- an Order of Possession on the basis of a mutual agreement to end this tenancy pursuant to section 55;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement 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, although I waited until 9:45 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord's agent L.S. (the landlord) attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The occupant of the basement of the rental unit, C.H. (the occupant), attended the hearing. The occupant stated that they were representing their own interests and not the interests of the tenant in this matter.

The landlord testified that they personally served the tenant with the Landlord's Application for Dispute Resolution (the Application), along with supporting evidence, on August 30, 2017. In accordance with sections 88 and 89 of the Act, I find that the tenant was duly served with the landlord's Application and supporting evidence on August 30, 2017.

On September 08, 2017, the landlord submitted an Amendment to an Application for Dispute Resolution (the Amendment) to the Residential Tenancy Branch (RTB) to request compensation for use and occupancy of the rental unit for September 2017 and

October 2017, to request compensation for the use of the utilities for these same months and to request recovery of the filing fee for this application. The landlord testified and provided written evidence that they left the Amendment in the mailbox of the rental unit on September 09, 2017.

At the outset of the hearing the landlord testified that the tenant vacated the rental unit as of August 30, 2017, and the occupants of the basement of the rental unit vacated the rental unit as of September 19, 2017. The landlord testified that he has rented out the rental unit to new tenants as of October 01, 2017. The landlord requested to withdraw his request for an Order of Possession.

The landlord's application for an Order of Possession is withdrawn.

The occupant requested to provide some testimony regarding the conduct of the landlord's agent and the occupant's failed attempt at signing a tenancy agreement with the landlord. I advised the occupant that this testimony is not relevant to the matter before me as they are not a named party to the proceeding and are no longer occupying the rental unit. The occupant exited the teleconference hearing at this point.

In this type of matter, the landlord must prove they served the tenant with the Amendment, with all the required inclusions, as per section 89 (1) of the *Act* which permits service by leaving a copy with the person or "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."

I find that the Amendment was left in the mailbox of the rental unit where the tenant no longer resides, which is not a method of service recognized by section 89 (1) of the *Act*.

Since I find the landlord has not served the tenant with the Amendment in accordance with section 89 (1) of the *Act*, I dismiss the landlord's application for a Monetary Order with leave to reapply. I make no findings on the merits of the matter.

Leave to reapply is not an extension of any applicable limitation period.

As the landlord has not been successful in this application, I dismiss their request to recover the filing fee from the tenant.

Conclusion

The landlord's Application for an Order of Possession is withdrawn.

The landlord's Application for a Monetary Order 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: September 29, 2017

Residential Tenancy Branch