



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR OPC FF OPN O

Introduction

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

- an Order of Possession for cause, pursuant to section 55;
- an Order of Possession for unpaid rent, pursuant to section 55; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another

The landlord testified that the Application for Dispute Resolution ("Application") and evidence were personally served to the tenant on August 17, 2017. The tenant acknowledges receipt of the hearing package, but disputes being served with the evidence for this application. In accordance with section 89 of the *Act*, I find the tenant duly served with the application. As the landlord was unable to provide sufficient proof that the tenant was served with the landlord's evidence, I am unable to find that the tenant was served the landlord's evidence in accordance with section 88 of the *Act*, and the landlord's written evidence is excluded for this hearing. The tenant did not submit any written evidence for this hearing.

The tenant disputes having received any 10 Day Notices to End Tenancy for Unpaid Rent ('10 Day Notice'), or 1 Month Notices to End Tenancy for Cause ('1 Month Notice').

Issues(s) to be Decided

Has the landlord served documents to the tenant in accordance with the *Act*?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover the filing fee for this application?

Preliminary Issue - Service of the 1 Month Notice

The landlord testified during the hearing that the 1 Month Notice was personally served to the tenant on May 1, 2017. The tenant disputes having received any Notices to End Tenancy. The landlord did not provide any witness testimony or proof of service to support that the tenant was served with either a 1 Month Notice or 10 Day Notice. The landlord did not provide any copies of any 10 Day Notices to End Tenancy for this Hearing, nor did he make any submissions regarding any other Notices to End Tenancy.

Section 88 of the *Act* establishes the following rules for service of documents.

How to give or serve documents generally

88 *All documents, other than those referred to in section 89 [special rules for certain documents], that are required or permitted under this Act to be given to or served on a person must be given or served 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 ordinary mail or 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 ordinary mail or registered mail to a forwarding address provided by the tenant;*
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;*
- (f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a*

landlord, for the address at which the person carries on business as a landlord;

(g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;

(h) by transmitting a copy to a fax number provided as an address for service by the person to be served;

(i) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];

(j) by any other means of service prescribed in the regulations.

At the hearing, the tenant disputes having received any Notices to End Tenancy from the landlord. The landlord testified that he had personally served the tenant with a 1 Month Notice, but was unable to provide any proof of service to support that the tenant was served with the Notice in accordance with the *Act*. Accordingly I find that the landlord has not served the tenant with any Notices to End Tenancy in a manner required by section 88 of the *Act*. For this reason, I cannot consider the landlord's application for an Order of Possession. I am not satisfied that the tenant was properly served with a 10 Day Notice, or a 1 Month Notice.

I dismiss the landlord's application for an Order of Possession. The 1 Month Notice dated May 1, 2017 is cancelled, and is of no force or effect, and this tenancy is to continue until ended in accordance with tenancy agreement and *Act*.

As the filing fee is normally awarded to the successful party after a hearing, I dismiss the landlord's application to recover the filing fee.

Conclusion

I dismiss the landlord's entire application, and the 1 Month Notice dated May 1, 2017 is cancelled. This tenancy is to continue until ended in accordance with the *Act* and tenancy agreement.

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: November 7, 2017

Residential Tenancy Branch