



Dispute Resolution Services

Page: 1

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 or utilities, pursuant to section 55;
- a monetary order for unpaid rent or utilities, 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 14 minutes. The landlord and his agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord's agent confirmed that he had authority to speak on behalf of the landlord at this hearing.

The landlord's agent initially testified that the landlord personally served the tenant with the landlord's notice of dispute resolution hearing on September 2, 2017. He then claimed that the landlord said it was two days after August 30, 2017, which must have been September 1, 2017.

When I questioned the landlord's agent as to what documents the landlord served to the tenant, he stated that the landlord served the notice of hearing only, not the application for dispute resolution or the written evidence package.

Section 59(3) of the *Act* states the following (my emphasis added):

*59 (3) Except for an application referred to in subsection (6), a person who makes an application for dispute resolution **must give a copy of the application to the other party** within 3 days of making it, or within a different period specified by the director.*

Section 89(1)(a) of the *Act* states the following (my 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;*

I find that the landlord has failed to serve the tenant with the landlord's application in accordance with sections 59(3) and 89(1) of the *Act*. The landlord was guessing between two different dates of service. The landlord's agent stated that the landlord only served the notice of hearing, not the application itself. Therefore, the tenant would not have notice as to why he would be required to attend a hearing in the first place because he did not have the application which stated this information.

At the hearing, I advised the landlord's agent that I could not confirm that the tenant was served with the landlord's application in accordance with sections 59 and 89 of the *Act*. I notified the landlord's agent that the landlord's application was dismissed with leave to reapply, with the exception of the \$100.00 filing fee. I notified him that the landlord would be required to file a new application and pay a new filing fee in order to pursue this matter further.

I also cautioned him that since this dispute involved a deceased person, to ensure that the proper estate of the deceased is named in the landlord's application, if required. I informed him that he could speak to an information officer at the Residential Tenancy Branch ("RTB") regarding information about the *Act*, consult the RTB website for further information about the hearing process and procedures, and speak to a lawyer to name the correct parties and for other legal advice.

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: November 20, 2017

Residential Tenancy Branch