



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 two tenants did not attend this hearing, which lasted approximately 12 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.

At the outset of the hearing, the landlord confirmed that she did not require an order of possession because the tenants had moved out, she regained possession and sold the property to a buyer. Accordingly, this portion of her application is dismissed without leave to reapply.

Preliminary Issue – Service of the Landlord's Application

The landlord testified that the tenants were served with her application for dispute resolution hearing package by way of registered mail. She claimed that she did not know the date of service or the Canada Post tracking number for the registered mail. She said that the tenants vacated the rental unit around June 21, 2017, but did not provide a forwarding address so she mailed the documents, including a notice of hearing dated June 30, 2017, to the rental unit because she had no other address for the tenants.

Section 89(1) of the *Act* outlines the methods of service for an application for dispute resolution, which reads in part as follows (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;
- (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].

Residential Tenancy Policy Guideline 12 states the following, in part (my emphasis added):

Registered mail includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available.

*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**.*

The landlord did not provide a date for service. The landlord did not provide a copy of the Canada Post receipt, tracking number or tracking report for the registered mail. The landlord mailed the package to an address where she knew the tenants were not residing at the time of service. The tenants did not attend this hearing.

Accordingly, I find that the landlord failed to prove service in accordance with section 89(1) of the *Act* and the tenants were not served with the landlord's application.

At the hearing, I informed the landlord that I was dismissing her monetary claim for unpaid rent with leave to reapply and the filing fee and the order of possession without leave to reapply.

I notified the landlord that she would be required to file a new application and pay a new filing fee, if she wished to pursue her monetary claim for unpaid rent. I cautioned her that she would have to prove service at the next hearing, including specific evidence regarding what documents were served, the date and method of service, as well as proof of the tenants' residential or forwarding address. I informed her that she could contact a lawyer for legal advice or speak to an information officer at the Residential Tenancy Branch ("RTB") regarding information about the RTB process.

Conclusion

The landlord's application for an order of possession and to recover the \$100.00 application filing fee is dismissed without leave to reapply.

The landlord's application for a monetary order for unpaid rent 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: December 14, 2017

Residential Tenancy Branch