



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

On December 14, 2017, an Adjudicator appointed pursuant to the *Residential Tenancy Act* (the *Act*) adjourned the landlord's application for dispute resolution for the following items to a participatory hearing. She did so on the basis of an *ex parte* hearing using the Residential Tenancy Branch's direct request process. I have been delegated authority under the *Act* to consider the landlord's application 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 from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:48 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. 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.

At the commencement of this participatory hearing, the landlord gave sworn testimony that the tenant advised her by way of a text on December 20, 2017 that she had vacated the rental unit on December 17, 2017. As the landlord now has possession of the rental unit, the landlord withdrew her application for an Order of Possession. The landlord's application for an Order of Possession is hereby withdrawn.

The landlord also testified that damage became evident after she obtained possession of the rental unit, and that she has had to store some of the tenant's possessions after this tenancy ended. As the only issues properly before me are those related to unpaid rent and the landlord's request to recover the filing fee, I advised that I could not consider these additional issues that have arisen after the landlord submitted her application for dispute resolution.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenant?

Preliminary Issue- Service of Dispute Resolution Hearing Package

The landlord gave sworn testimony that she sent the tenant a copy of the dispute resolution hearing package including the notice advising the tenant of this participatory hearing by registered mail at or about 7:07 p.m. on December 17, 2017. She gave sworn testimony as to the Canada Post Tracking Number for that registered mailing. She advised that she also sent a copy of this Tracking Number to the Residential Tenancy Branch prior to this hearing. She also said that she sent the tenant a text message reminding her of the hearing scheduled for January 11, 2018.

Section 89(1) of the *Act* establishes how dispute resolution hearing packages including copies of notices of hearing for monetary awards may be served to Respondents. Section 89(1) reads in part as follows:

Special rules for certain documents

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;...*
- (c) by sending a copy by registered mail to the address at which the person resides...;*
- (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].*

Section 89 of the *Act* permits service of the landlords' Application by way of registered mail, the method selected by the tenant. However, section 89(1)(c) and 89(2)(b) of the *Act* requires service to the "address at which the tenant/person **resides**" (emphasis added).

The Adjudicator's Interim Decision of December 14, 2017 provided the following instructions written in bold for emphasis regarding how the Interim Decision and the Notice of Reconvened Hearing were to be served by the landlord to the tenant:

Notices of Reconvened Hearing are enclosed with this interim decision. The applicant must serve the Notice of Reconvened Hearing, the interim decision, and all other required documents, upon the tenant within three (3) days of receiving this decision in accordance with section 89 of the Act.

The landlord testified that the tenant vacated the rental unit on the same day that she sent the dispute resolution hearing package including the Notice of Hearing. The Residential Tenancy Branch (the Branch) has no record of a Canada Post Receipt for a registered mailing from the landlord sent to the tenant on December 17, 2017. For these reasons, during the hearing I checked Canada Post's Online Tracking system to confirm the details of the landlord's registered mailing of the Interim Decision and Notice of Hearing.

During the hearing, I advised the landlord that Canada Post's Online Tracking system revealed that the Tracking Number she provided was for a registered mailing received by Canada Post at 7:06 p.m. on December 13, 2017. This package was successfully delivered to the tenant on December 15, 2017.

In the Interim Decision of December 14, 2017, there are the following references to the landlord's registered mailing of December 13, 2017:

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing took place on December 13, 2017. Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the Act, I find that the tenant will be deemed to have been served with the Direct Request Proceeding documents on December 18, 2017, the fifth day after their registered mailing.

The landlord also testified that she sent the package to the tenant the day after she attended the Branch's Burnaby Office shortly before 4:00 p.m. in December.

The Branch's records confirm that the landlord did attend its Burnaby Office shortly before closing on December 12, 2017. At that time, she was still in the process of completing her direct request application.

I find that the registered mail package the landlord sent was on December 13, 2017 and not December 17, 2017, as claimed by the landlord. As noted above, there is reference to this December 13, 2017 registered mailing in the Interim Decision, which is also confirmed in the Canada Post Records, and the Branch's records regarding the landlord's own sworn testimony that she sent this package the day after visiting the Branch's Burnaby Office shortly before 4:00 p.m. It would also have been impossible for the landlord to have attached a copy of the Interim Decision of December 14, 2017 and the Notice of the Reconvened Hearing created on December 14, 2017, as part of a registered mail package sent out the previous day. From this information, I can only conclude that the landlord has confused the original notice of her commencement of an application for dispute resolution by way of the Branch's direct request proceedings with the additional registered mailing that she was required to send following December 14, 2017. Based on the evidence before me, the landlord clearly did not send the Notice of the Reconvened Hearing and the Interim Decision to the tenant.

I find that the considerable written evidence and sworn testimony before me does not enable me to find that the landlord has followed the order provided in the Interim Decision of December 14, 2017 as the tenant has not been notified of the dispute resolution hearing or the Interim Decision in accordance with section 89(1) of the *Act*. The landlord's text to the tenant is not an authorized way of notifying a tenant of a hearing. As the landlord has not demonstrated that she has served the dispute resolution hearing package including the Notice of Reconvened Hearing and the Interim Decision to the tenant in accordance with section 89(1) of the *Act*, I dismiss her application with leave to reapply.

Should the landlord choose to reapply, she is reminded that any new application for dispute resolution sent by registered mail to the tenant would need to be sent to an address either provided by the tenant or where the tenant resides at the time of mailing.

Conclusion

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

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: January 11, 2018

Residential Tenancy Branch