



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR; FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *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 their filing fee for this application from the tenants 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.

Preliminary Issues – Service of Documents

The landlord's agent (the agent) testified that they posted the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on a gate that the tenants would have to access in order to enter their rental unit on December 28, 2017. Tenant TS (the tenant) said that neither she nor the other tenant, TS, received that 10 Day Notice. As the landlord entered into written evidence a signed Proof of Service document, witnessed by another individual, attesting to the agent's service of this Notice to the tenants, I find that they were deemed served with the 10 Day Notice on December 31, 2017, the third day after its posting, in accordance with sections 88 and 90 of the *Act*.

Although the tenant attended the hearing, she testified that the tenants did not receive a copy of the dispute resolution hearing package including notice of this hearing. The tenant testified that they only became aware of this hearing from the Residential Tenancy Branch with respect to another 2 Month Notice to End Tenancy for Landlord's Use of the Property (the 2 Month Notice) issued by the agent on January 24, 2018.

Section 89 of the *Act* establishes the Special Rules for serving applications for dispute resolution to respondents. Section 89 of the *Act* is an essential element of the provision of natural justice, which ensures that a respondent knows the case against them and has an

adequate opportunity to respond to the claims submitted by the applicant. Section 89 reads as follows:

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].*

(2) An application by a landlord under section 55 [order of possession for the landlord], 56 [application for order ending tenancy early] or 56.1 [order of possession: tenancy frustrated] must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;*
- (b) by sending a copy by registered mail to the address at which the tenant resides;*
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;*
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;*
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].*

The landlord's initial application for a monetary award of \$2,960.05, reduced at the hearing by the agent to \$2,887.49 due to payments made by the tenants, cannot be served by attaching it to a door or other conspicuous place at the address where the tenants reside. I find that the landlord's application for a monetary award has not been served in accordance with section 89(1) of the *Act*, and is therefore dismissed with leave to reapply.

Paragraph 89(2)(d) of the *Act* does permit service of the landlord's dispute resolution hearing package by posting on a door or other conspicuous place where the tenants reside, provided sufficient evidence has been given to confirm that posting. In this case, the tenant maintained that the tenants did not receive the dispute resolution hearing package.

Based on the tenant's sworn testimony, I accept that the gate where the agent said he posted the 10 Day Notice and the dispute resolution hearing package is a conspicuous place that would satisfy the description outlined in paragraph 89(2)(d) of the *Act*. However, the landlord still bears the burden of proving that the notice was posted as the agent claimed at the hearing. Although the agent testified that his spouse witnessed him post the hearing package on the gate, the agent provided no signed or witnessed proof of service document attesting to her observation of the agent's posting of the hearing package on the gate as declared by the agent. While I gave the agent an opportunity to call his spouse as a witness for this hearing, the agent advised that she was unavailable.

Under these circumstances, and as the tenant gave testimony that the tenants did not receive that hearing package, I find that the landlord's agent has not established to the extent required that the dispute resolution hearing package was served to the tenants in accordance with section 89(2) of the *Act*. I dismiss the landlord's application to obtain an end to this tenancy on the basis of the 10 Day Notice of December 28, 2017, with leave to reapply.

Conclusion

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: February 01, 2018

Residential Tenancy Branch