



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPN, MNR, MND, MNDC, MNSD, FF

Introduction

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

- an order of possession based on the tenants' notice to end tenancy, pursuant to section 55;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two tenants (male and female) did not attend this hearing, which lasted approximately 24 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.

Preliminary Issue – Service of the Landlord's Application

The landlord testified that the tenants were each served with a copy of the landlord's application for dispute resolution hearing package on September 15, 2017, both by way of registered mail. The landlord provided a Canada Post tracking number and printout for service to the male tenant, with his application. The landlord provided a Canada Post tracking number verbally during the hearing, for service to the female tenant.

The landlord stated that the tenants did not provide a forwarding address when they vacated the rental unit. He said that he did not know their residential address. He said

that he mailed the application to a business address that the male tenant provided to him on a business card at the end of the tenancy around July 29 or 30, 2017.

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].*

I find that the landlord failed to provide sufficient evidence that the tenants were served with the landlord's application at a residential address or a forwarding address, in accordance with section 89(1) of the *Act*. The tenants did not attend this hearing. Even though someone signed for the landlord's application package that was sent to the male tenant, according to the Canada Post tracking printout provided by the landlord, the signatory name recorded by Canada Post was the male tenant's name together with the name of a female doctor. The signature image was not available from Canada Post, to indicate who actually signed for the package. The tracking number for the female tenant's package could not be found on the Canada Post tracking website.

The tenants did not provide a forwarding address to the landlord. The landlord is not aware of the tenants' residential address. Service of application documents to tenants at a business address is not permitted under section 89 of the *Act*.

As the landlord failed to prove service in accordance with section 89(1) of the *Act*, I find that the tenants were not served with the landlord's application. At the hearing, I advised the landlord that I was dismissing his application with leave to reapply, except for the \$100.00 filing fee which is dismissed without leave to reapply.

I notified the landlord that if he wished to pursue this matter further, he would have to file a new application and pay another filing fee. I cautioned him to be prepared to prove service at the next hearing, as per section 89 of the *Act*. I notified the landlord that he could consult a lawyer for legal advice or an information officer at the Residential Tenancy Branch for information regarding the *Act* or the hearing process. I informed the landlord that he could apply for a substituted service order pursuant to section 71 of the *Act*, if he had sufficient evidence to do so.

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: April 05, 2018

Residential Tenancy Branch