



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("the *Act*") for an early end to this tenancy and an Order of Possession pursuant to section 56; and authorization to recover the filing fee for this application, 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.

Both parties confirmed at the beginning of the hearing that the tenant moved out on April 1, 2018. As this tenancy has now ended, the landlords cancelled their application for an Order of Possession.

Preliminary Issue - Service of Documents

The landlords testified during the hearing that they had attempted to serve the tenant their application for dispute resolution by slipping the documents under the tenant's door.

The landlords indicated in the hearing that they are applying for a monetary order for unpaid rent for this tenancy.

Section 89(1) of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution for a monetary Order.

89(1) An application for dispute resolution,...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;...*

At the hearing, I advised both parties of my finding landlords had not served the tenant with their monetary application in a manner required by section 89(1) of the *Act*. For this reason, I cannot consider the application for a Monetary Order.

As the landlords' application for a Monetary Order was not served to the tenant in a manner required under section 89(1) of the *Act*, I the landlords' application for a Monetary Order for unpaid rent with leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As I was not required to make a decision on the merits of this case, I find that the landlords are not entitled to recover the \$100.00 filing fee paid for this application. The landlords must bear the cost of this filing fee.

Conclusion

As the tenant moved out, the landlords cancelled their application for an Order of Possession.

The landlords' monetary application for unpaid rent is dismissed with leave to reapply. The landlords' application to recover the filing fee is dismissed without 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 13, 2018

Residential Tenancy Branch