



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

On March 21, 2018, an Adjudicator appointed pursuant to the *Residential Tenancy Act* (the *Act*) adjourned the landlord's direct request application for an *ex parte* dispute resolution hearing to a participatory hearing. The Interim Decision of the adjourned *ex parte* dispute resolution hearing explained that the landlord's application suffered from deficiencies in the submitted evidentiary material and therefore the matter could not be addressed through the direct request process.

Through the avenue of a participatory hearing, I have been delegated authority under the *Act* to consider the landlord's application for the following:

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55 of the *Act*;
- a Monetary Order for unpaid rent pursuant to section 67 of the *Act*; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the *Act*.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:34 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:00 a.m. 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. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

Preliminary Issue - Service of Dispute Resolution Hearing Package

The landlord was asked to confirm the details around service of the dispute resolution hearing package to the tenant. The landlord advised that he was at work and did not have ready access to the evidentiary materials submitted in relation to this dispute. The landlord stated that he would try to look up the information on his phone and took a few moments to proceed with finding the information. Subsequently, the landlord gave sworn testimony that the two tenants were individually served with the Notice of Dispute Resolution hearing package by Canada Post registered mail on March 15, 2018. The landlord testified that both packages had been returned back to him as unclaimed.

Given that the Adjudicator's Interim Decision of the *ex parte* dispute resolution hearing was not rendered until March 21, 2018, it would not have been possible for the landlord to have served the Interim Decision along with the hearing details regarding the April 17, 2018 dispute resolution hearing to the tenants by registered mail on March 15, 2018.

I asked the landlord when the last time was that he had communicated with the tenants and whether he had discussed the dispute resolution hearing with the tenants. The landlord stated that he had emailed information regarding the dispute resolution hearing to the tenants on April 14, 2018, three days before this hearing, but he had not received any response from the tenants.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? 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?

Analysis

On page one of the Interim Decision dated March 21, 2018, it is noted that the landlord sent the tenants the notice of the direct request dispute resolution hearing by registered mail on March 15, 2018, as follows:

The landlord submitted two signed Proof of Service of the Notice of Direct Request Proceeding forms which declare that on March 15, 2018, the landlord's agent served each of the above-named tenants with the Notice of Direct Request Proceeding via registered mail. The landlord provided two copies of the Canada

Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Section 90 of the Act determines that a document served in this manner is deemed to have been received five days after service.

It is possible that the landlord confused the service of the *ex parte* direct request dispute resolution hearing package with the service of the notice of reconvened dispute resolution hearing package. This is an important distinction as the tenants were to have been provided an opportunity to attend the dispute resolution participatory hearing to respond to the landlord's application for an order of possession.

The March 21, 2018 Interim Decision provides the following instructions, written in bold for emphasis, regarding how the Interim Decision and the Notice of Reconvened Dispute Resolution Hearing were to be served by the landlord to the tenant:

Notices of Reconvened Hearing are enclosed with this interim decision for the applicant to serve, with 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 he had emailed information regarding the dispute resolution to the tenants on April 14, 2018, three days before this hearing.

Section 89 of the *Act* establishes the following special rules for how certain documents, which include a notice of dispute resolution hearing, are permitted to be served:

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;*
- (e) as ordered by the director under section 71(1) [director's orders: delivery and service of document]...*

Service by email is not a permitted method for serving a notice of dispute resolution hearing under section 89(1) of the *Act*.

I find that the documentary 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 March 21, 2018 pertaining to serving the tenant with notice of the dispute resolution hearing that was scheduled for April 17, 2018, in a manner required by section 89(1) of the *Act*.

As the landlord has not demonstrated that he 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 his application with leave to reapply.

Conclusion

I dismiss the landlord's application in its entirety 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 20, 2018

Residential Tenancy Branch