



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, FFL, CNR, OLC, FFT

Introduction

This was a cross application hearing that dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's notice to end tenancy for unpaid rent or utilities pursuant to section 46;
- an order for the landlord to comply with the *Act*, regulation, and or the tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

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

- an order of possession for unpaid rent pursuant to sections 46 and 55;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; 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 for 20 minutes in order to enable the tenant to call into this teleconference hearing scheduled for 2:30 p.m. The landlord TN (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.

Service of Cross Applications

The landlord testified that she did not serve the landlord's dispute resolution package on the tenant.

The landlord provided undisputed testimony that she did not receive a dispute resolution package from the tenant. The tenant did not attend the hearing or submit into evidence any proof of service documentation.

Analysis – Service Cross Applications

Section 89 of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution:

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]...*

I find that neither the tenant nor the landlord served each other in a manner required by section 89(1) of the *Act*. At the hearing, I advised the landlord that I was dismissing her application with leave to reapply.

I notified the landlord that if she wished to pursue this matter further, she would have to file a new application. I cautioned her to be prepared to prove service at the next hearing, as per section 89 of the *Act*. I notified the landlord that she 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 she

could apply for a substituted service order pursuant to section 71 of the *Act*, if she had sufficient evidence to do so.

Conclusion

I dismiss the tenant's application without leave to reapply.

I dismiss the landlord's application to recover the \$100.00 filing fee 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 17, 2018

Residential Tenancy Branch