



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MNR, FFL

Introduction

This hearing is a reconvened direct request which dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of possession based on unpaid rent pursuant to sections 46 and 55;
- a monetary Order for unpaid rent pursuant to section 67 and 72; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:39 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 11:00 a.m. The landlords attended the hearing and were 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 landlords and I were the only ones who had called into this teleconference.

Service of Direct Request Package

Landlord T.L. testified that she served the tenants with separate direct request packages by registered mail on March 16, 2018. Landlord T.L. provided the Canada Post Tracking Numbers to confirm these registered mailings. I find that the tenants were deemed served with these packages on March 21, 2018, 5 days after their mailing, in accordance with sections 88, 89 and 90 of the *Act*.

Service of Notice of Dispute Resolution Hearing

Landlord T.S. served the tenants with separate dispute resolution packages by registered mail on April 7, 2018 to the PO box provided by the tenants at the beginning

of the tenancy. Landlord T.L. provided the Canada Post Tracking Numbers to confirm these registered mailings. Landlord T.S. testified that at the time of the mailings, the tenants no longer resided at the rental unit and did not provide a forwarding address. I checked the tracking numbers provided by the landlords and neither package was picked up by the tenants.

Analysis – Service of Notice of Dispute Resolution Hearing

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]...*

At the time the dispute resolution packages were sent via registered mail, April 7, 2018, the tenants no longer resided at the residential address as is required by section 89(1)(c) of the *Act*. While the registered mail was sent to a PO Box in the same town, there is no guarantee that the tenants were still retrieving mail from that PO Box; in addition, the tracking information from the registered mail confirmed that the packages were not picked up. I find that the landlords did not serve the tenants with the dispute resolution package in a manner required by section 89(1) of the *Act*.

During the hearing landlord T.S. testified that the landlords wanted to file a claim for damages to the rental property. I notified the landlord that if she wished to pursue a new claim 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 landlords' application to recover the \$100.00 filing fee without leave to reapply.

I dismiss the landlords' application for an Order of possession without leave to reapply.

I dismiss the landlords' application for a monetary Order for unpaid rent 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 30, 2018

Residential Tenancy Branch