



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, FFL,

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on March 13, 2018, wherein the Landlords sought monetary compensation from the Tenant in the amount of \$2,600.00 for unpaid rent and utilities as well as filing fee.

Only the Landlord's agent, J.G. called into the hearing. As the Tenant failed to call into the hearing, service of the Landlords' Application and Notice of hearing was considered.

J.G., testified that the Tenant moved from the rental unit on February 20, 2018. J.G. also stated that he served the Notice of Hearing and the Landlord's Application on a person claiming to be the Tenant's girlfriend. He was not able to say when the notice was served.

Rule 3.1 of the *Residential Tenancy Branch Rules of Procedure* provides as follows:

3.1 Documents that must be served

The applicant must, within 3 days of the hearing package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the application for dispute resolution;
- b) the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch;
- c) the dispute resolution proceeding information package provided by the Residential Tenancy Branch;

- d) a detailed calculation of any monetary claim being made;
- e) a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
- f) any other evidence, including evidence submitted to the Residential Tenancy Branch with the application for dispute resolution, in accordance with Rule 2.5 [*Documents that must be submitted with an application for dispute resolution*].

Section 89 of the *Residential Tenancy Act* deals with service of an Application for Dispute Resolution when a party seeks monetary compensation from the other and provides as follows:

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*].

The Landlord's agent testified that they served a person who claimed to be the Tenant's girlfriend; this is not effective service pursuant to section 89 of the *Act*. As I am unable to find that the Tenant was served, I am unable to find the Tenant was given proper legal notice of the hearing.

One of the principles of natural justice is that a party to a dispute has the right to know the claim against them and an opportunity to attend the hearing and make submissions in defense of the claims made. To proceed without legal notice to the Tenant would offend this principle and would deny the Tenant a fair opportunity to be heard. **I therefore dismiss the Landlords' claim with leave to reapply.**

In the Details of Dispute the Landlord wrote that they wanted the Tenant removed from the house. The Landlords did not seek an Order of Possession on their Application, nor

did the Landlords provide a copy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, which the agent claimed was served on the Tenant by posting to the rental unit door.

The Landlords are encouraged to contact the Residential Tenancy Branch to seek information as to how to request an Order of Possession of the rental unit based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

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: May 02, 2018

Residential Tenancy Branch