



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL FFL

Introduction

This hearing dealt with applications from the landlord pursuant to the *Residential Tenancy Act* (the *Act*) for an Order of Possession for landlord's use of property pursuant to Section 55 and authorization to recover the filing fee for this application from the tenant pursuant to Section 72.

Both parties appeared at the hearing.

Issues to be Decided

Is the landlord entitled to an Order of Possession pursuant to Sections 49 and 55 of the *Act*?

Is the landlord entitled to recover the filing fee for the cost of this Application for Dispute Resolution, pursuant to Section 72 of the *Act*?

Background and Evidence

At the outset, the landlord testified he served the Two Month Notice to End Tenancy for Landlord's Use of Property (*Two Month Notice*) dated September 21, 2017 upon the tenant by registered mail on that same day pursuant to Section 88(c) of the *Act*.

However, the Tenant denied receipt and the landlord did not file any evidence of service of the Two Month Notice by registered mail.

Analysis

Section 88 of the *Act* allows a landlord to serve a tenant with a Two Month Notice, among other methods, by mail. Section 90 of the *Act* stipulates that if a document is served by mail it is deemed served within 5 days of it being mailed.

However, deeming provisions can only be applied if there is no evidence that the documents were received on a specific date that is different than allowed for under Section 90.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In the case before me, where the tenant denies receipt, I find the landlord has failed to provide any evidence that the tenant was served with the Two Month Notice.

Conclusion

The landlord's application for Dispute Resolution is dismissed 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: May 15, 2018

Residential Tenancy Branch