



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, FFL ; CNR, OLC, FFT

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice"), pursuant to section 46;
- an order requiring the landlords to comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 15 minutes. The two landlords, male and female, attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing, the landlords confirmed that the tenant had moved out of the rental unit and they did not require an order of possession against the tenant. Accordingly, I notified them that this portion of their application was dismissed without leave to reapply.

Preliminary Issue – Dismissal of Tenant's Application

Rule 7.3 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* provides as follows:

7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in

the absence of that party, or dismiss the application, with or without leave to re-apply.

In the absence of any evidence or submissions from the tenant, I order the tenant's entire application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's application to cancel a 10 Day Notice, the landlords are entitled to an order of possession if the notice meets the requirements of section 52 of the *Act*. However, the landlords indicated above that they do not require an order of possession.

Preliminary Issue – Service of the Landlords' Application

The landlords testified that the tenant was served with the landlords' application for dispute resolution hearing package by way of registered mail. They claimed that they did not know the date of service or the Canada Post tracking number for the registered mail.

Section 89(1) of the *Act* outlines the methods of service for an application for dispute resolution, which reads in part 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].*

Residential Tenancy Policy Guideline 12 states the following, in part:

Registered mail includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available.

Proof of service by Registered Mail should include the original Canada Post Registered Mail receipt containing the date of service, the address of service, and that the address of service was the person's residence at the time of service, or the landlord's place of conducting business as a landlord at the time of service as well as a copy of the printed tracking report.

The landlords did not provide a date for service. The landlords did not provide a copy of the Canada Post receipt, tracking number or tracking report for the registered mail. The tenant did not attend this hearing to confirm receipt of the landlords' application. Accordingly, I find that the landlords failed to prove service in accordance with section 89(1) of the *Act* and the tenant was not served with the landlords' application.

At the hearing, I informed the landlords that I was dismissing their application with leave to reapply, except for the filing fee. I notified them that they would be required to file a new application and pay a new filing fee, if they wished to pursue their monetary claim. I cautioned them that they would have to prove service at the next hearing, including specific evidence regarding the date, method and proof of service.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

The landlords' application for an order of possession and to recover the \$100.00 application filing fee is dismissed without leave to reapply.

The landlords' application for a monetary order for unpaid rent 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: June 04, 2018

Residential Tenancy Branch