



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Landlord requesting an Order for Possession on the basis of a 10-Day Notice to End Tenancy for Rent Arrears dated April 18, 2018. The Landlord also requests a monetary order for payment of rent arrears and for payment of the filing fee.

In an interim decision dated May 8, 2018, the Adjudicator ordered that this Application be reconvened to allow for a participatory hearing under section 74 of the Act. The tenancy agreement filed was unclear as to the amount of the rent to be paid.

The Landlord appeared for the scheduled hearing, but neither Tenant called into the teleconference line which remained open for 20 minutes. The Landlord advised at the hearing that the Tenants have since vacated the premises, so I amended the Application to withdraw the request for an Order of Possession, with the Landlord’s permission.

The Landlord states that she was on holidays in May and when she returned, she discovered that the Direct Request had not been granted by this office, and that a decision to hold a hearing had been made. She was in contact with the Tenants on May 22nd, and then sent them each packages containing the Notice of Hearing and evidence by registered mail; the next day, she attended at the residence accompanied by police for security, but found the place vacant and left in a very poor condition. She later found the registered mail cards hanging on the doorknob, and the one Tenant’s package has been returned to her as “undeliverable”.

The monetary order worksheet was amended by the Landlord less than two weeks before the hearing date, to increase the claim to \$12,321.95, to claim for clean up and additional costs that arose after the tenancy ended.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order for rent arrears, pursuant to section 67 of the *Residential Tenancy Act* ("Act")?

Is the Landlord entitled to reimbursement of the filing fee, pursuant to section 72 of the Act?

Analysis

I am not satisfied that the Tenants had proper notice of this hearing. It is apparent that they moved out prior to receiving the delivery or the registered mail cards, and unlikely that they had notice that a hearing was being held. In addition, the Landlord has a number of other claims for damages and future lost rent and would like to apply to retain the security deposit and pet deposit. Accordingly, I am not prepared to render a decision on the issues before me due to lack of evidence proving that the Tenants had notice of these claims.

The Landlord indicated that she would like to make an application for substituted service and apply for rent arrears, damages and the security/pet deposits, now that the tenancy has ended.

There is provision under the Act to have an order issued for substituted service under section 71, which states:

71 (1) *The director may order that a notice, order, process or other document may be served by substituted service in accordance with the order.*

(2) *In addition to the authority under subsection (1), the director may make any of the following orders:*

(a) *that a document must be served in a manner the director considers necessary, despite sections 88 [how to give or serve documents generally] and 89 [special rules for certain documents];*

(b) *that a document has been sufficiently served for the purposes of this Act on a date the director specifies;*

(c) *that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.*

An application for substituted service may be made at the time of filing the application or after filing. The party applying must demonstrate two things:

1. That the party to be served cannot be served by any of the methods permitted under the Legislation, and
2. That there is a reasonable expectation that the party being served will receive the documents by the method requested.

The Landlord may file a new application requesting the rent arrears, damages and the security deposits and may seek further information on applying for substituted service through the Residential Tenancy Branch by speaking with an Information Officer.

The Landlord has two years from the end of the tenancy to apply for the rent and damages, and for the substituted service order. In the meantime, if the Tenants provide a forwarding address and demand the return of their deposits in the sum of \$2,000.00, this may avoid the need for an Order for Substituted Service; otherwise, the deposits will be retained and after the one-year anniversary of the end of the tenancy, the Landlord may keep the deposits, unless otherwise ordered by the Residential Tenancy Branch.

Conclusion

The Landlord's Application is hereby dismissed, with leave to re-apply.

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 11, 2018

Residential Tenancy Branch