



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL MNDCL-S MNDL-S MNRL-S

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for an Order of Possession for:

- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38;
- a monetary order for compensation for money owed, damage, or losses under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

While the landlord's agent, CT, attended the hearing by way of conference call, the tenant did not. I waited until 1:40 p.m. to enable the tenant to participate in this scheduled hearing for 1:30 p.m. The landlord's agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 7.3 of the 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

Preliminary Issue - Service of the Application for Dispute Resolution

The landlord's agent testified during the hearing that he had attempted to personally serve the tenant on November 17, 2017. The tenancy ended on September 29, 2017 when a bailiff attended to remove the tenant from the premises. The tenant did not provide a forwarding address to the landlord, and the landlord is not in possession of the tenant's new address. On June 1, 2018, the landlord attempted to serve the evidence for this hearing to the tenant by mailing the evidence to the tenant at the last known address, which is the address of this tenancy where the tenant no longer resides.

Section 89 of the *Act* establishes the following special rules for service of documents.

Special rules for certain documents

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].*

I am not satisfied that the landlord provided sufficient evidence to support that the tenant was served in accordance with the requirements of section 89 of the *Act*. Accordingly, I dismiss the landlord's application for monetary compensation and to retain the security deposit with leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As I was not required to make a decision on the merits of this case, I find that the landlord is not

entitled to recover the \$100.00 filing fee paid for this application. The landlord must bear the cost of this filing fee.

Conclusion

I dismiss the landlord's application to recover the filing fee without leave to reapply.

I dismiss the remainder of the landlord's monetary application for dispute resolution 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 20, 2018

Residential Tenancy Branch