



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNRL-S FFL

Introduction

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

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary Order for unpaid rent pursuant to section 67; and
- recovery of the filing fee from the tenant pursuant to section 72.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was represented by its agents. At several points during the hearing the tenants were disconnected from the teleconference call but managed to call in again and rejoin the hearing.

The landlord's agent MB testified that they served the 10 Day Notice to End Tenancy for Unpaid Rent dated July 19, 2018 by posting on the rental unit door on that date. The landlord's agent SM testified that he served the tenant with the application for dispute resolution by registered mail sent on August 4, 2018 and personally on August 10, 2018. The agent testified that on August 10, 2018 he attended at the rental unit, interacted with an elderly man who was generally uncommunicative but appeared to reside at the rental address and left the application for dispute resolution at the address. The tenant disputes that they were served with the landlord's application by registered mail or personally.

At the outset of the hearing the parties said that the dispute address provided on the landlord's application is incorrect and provided the correct address.

At the At the outset of the hearing, the landlord made an application requesting to amend the monetary amount of the claim sought. The landlord indicated that since the application was filed the tenant has failed to pay rent for additional months and that the total arrears as of the date of the hearing is \$3,750.00. As the amount of arrear changing as additional rent becomes due is reasonably foreseeable, pursuant to section 64(3)(c) of the Act and Rule 4.2 of the Rules of Procedure I amend the landlord's Application to increase the landlord's monetary claim from \$2,850.00 to \$3,750.00.

Preliminary Issue – Service of Landlord's Application

Section 89(1) of the Act establishes the following Special rules for certain documents, which include an application for dispute resolution for a monetary award:

89(1) An application for dispute resolution,...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 document]...*

Section 89(2) of the Act further provides the following requirements for service of an application by a landlord under section 55 [order of possession for the landlord]:

89(2) An application for dispute resolution... must be given in one of the following ways:

- (a) by leaving a copy with the tenant;*
- (b) by sending a copy by registered mail to the address at which the tenant resides;*
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;*

(d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;

(f) as ordered by the director under section 71 (1) director's orders: delivery and service of document]...

While the landlord's agent SM provided a Canada Post tracking number, they testified that there appears to have been an error with mailing. The agent testified that they attended at the dispute address where there was an uncommunicative elderly man present where they left the application for dispute resolution. The tenant disputes that they were served with the application in either of the ways cited by the landlord.

I find that there is insufficient evidence to conclude that service was performed in accordance with the Act. While the agent SM stated that they attended at the rental unit where they met an individual who appears to be a resident, they were never provided with a name, no signature confirming service was obtained and the tenant disputes that any documents were left at the address. The agent SM testified that there appears to have been an error with the registered mail and it appears to have been undeliverable. Furthermore, the landlord's application for dispute resolution originally listed an incorrect dispute address. While I accept that the agent SM attempted to serve the tenant in accordance with instructions they may have been provided I find that there is insufficient evidence to establish on a balance of probabilities that the tenant was actually served in accordance with the Act.

The testimony of the parties and the evidence provided leaves me with considerable doubt as to whether the tenant was served. In the present circumstances I am not satisfied that the tenant was served with the landlord's application for dispute resolution. Therefore, I dismiss the landlord's application.

Conclusion

The landlord's application is dismissed without 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: September 25, 2018

Residential Tenancy Branch