



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM, FFL
 MNDCT, OLC

Introduction

This hearing convened as a result of cross applications. In the Landlord's Application, filed on August 7, 2018, the Landlord sought an Order of Possession and recovery of the filing fee. In the Tenants' Application, filed on August 9, 2018, the Tenants sought monetary compensation from the Landlord and recovery of the filing fee.

Only the Landlord's representatives called into the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenants did not call into this hearing, although I left the teleconference hearing connection open until 9:41 a.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord's representatives and I were the only ones who had called into this teleconference.

As the Tenants did not call in, I considered service of the Landlord's hearing package. The Landlord's Property Manager, J.M., testified that she served both the Tenants individually with the Notice of Hearing and the Application on August 18, 2018 by registered mail. A copy of the registered mail tracking numbers for both packages is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above and section 90 of the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Tenants were duly served as of August 23, 2018 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

J.M. confirmed that the Tenants vacated the rental unit on September 18, 2018; as such **an Order of Possession was no longer required.**

Analysis and Conclusion

Rules 7.1 and 7.3 of the *Residential Tenancy Branch Rules of Procedure* provide as follows:

Commencement of Hearing:

The hearing must commence at the scheduled time unless otherwise decided by the arbitrator.

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.

As the Tenants did not call into the hearing by 10:41 a.m., and the Landlord called in and was ready to proceed, **I dismiss the Tenants' claim without leave to reapply.**

Although the Tenants vacated the rental unit prior to the hearing, they did so only after the Landlord applied for Dispute Resolution. As such, and pursuant to section 72 of the *Residential Tenancy Act*, **I find that the Landlord is entitled to recovery the \$100.00 filing fee paid for their application; the Landlord may retain \$100.00 of the Tenants' \$412.50 security deposit.**

The Property Manager confirmed that the Tenants did not pay rent for September 2018. A claim for loss of rent was not before me; I therefore grant the Landlord liberty to reapply for monetary compensation from the Tenants.

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