



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL FF

Introduction

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

- an Order of Possession pursuant to a 2 month notice to end tenancy for landlord's use of property pursuant to section 55; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Only the landlords T.M.D. and B.A.D (the "landlords") attended the hearing by way of conference call.

The landlords provided undisputed testimony that a 2 Month Notice to End Tenancy was placed in the tenants' mail slot on July 27, 2018. Pursuant to sections 88 & 90 of the *Act*, the tenants are deemed served with this notice on July 30, 2018, three days after its placement.

The landlords said their application for dispute along with the evidentiary package was given to the tenants sometime between October 11, 2018 and October 14, 2018. The landlords said they were unable to confirm the exact date but were confident that the tenants had been made aware of the hearing.

Analysis

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]...*

While the landlords have provided undisputed testimony that they served their Application for Dispute Resolution in accordance with section 89(1)(a) of the *Act*, I find the landlords were unable to accurately provide a date on which the Application for Dispute was served on the tenants.

Section 90 of the *Act* states documents are deemed to have been received by a party. I find the landlords' inability to accurately recall the date on which they served the tenants prevents them from relying on this provision. The tenants did not attend the hearing and I am not satisfied the tenants were adequately made aware of this hearing. The landlords' application for an Order of Possession is dismissed with leave to reapply.

The landlords must bear the cost of their own filing fee.

Conclusion

I dismiss the landlords' application, with leave to reapply.

The landlords must bear the cost of their own filing fee.

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: November 20, 2018

Residential Tenancy Branch