



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNRL FFL

Introduction

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

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

The tenant did not attend this hearing which lasted approximately 15 minutes. The landlord was represented by their agent JW (the "landlord") who appeared and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated November 3, 2018 was served personally on the tenant on that date by the landlord and the named applicant.

The landlord testified that the landlord's application for dispute resolution dated November 14, 2018 was served personally on the tenant shortly after the application was filed by the landlord and the named applicant.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award as claimed?

Analysis-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]...*

While leaving a copy with a person is an acceptable manner of service I find that there is insufficient evidence in support of the landlord's submission that the tenant was personally served. The tenant testified that service was performed by the applicant and that she witnessed the personal service but provided no documentary evidence in support. The named applicant did not attend the hearing to testify as to service nor did they provide a sworn written statement. The tenant gave vague testimony about the date of serving the application for dispute resolution stating that service occurred after the application was filed. I found the evidence of the landlord to be lacking in details and unconvincing. Based on the evidence provided I am not satisfied on a balance of probabilities that the tenant was served with either the 10 Day Notice or the application for dispute resolution in accordance with the *Act* or at all.

For the above reasons I dismiss the landlord's application with leave to reapply.

Conclusion

The landlord's application is dismissed 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: December 4, 2018

Residential Tenancy Branch