



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU, MNRL, FFL

Introduction

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

- an order of possession for unpaid rent or utilities, pursuant to section 55;
- a monetary order for unpaid rent or utilities, pursuant to section 67;
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 18 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The hearing began at 9:30 a.m. with only me present. The landlord called in late at 9:38 a.m., stating that he could not find his paperwork to call into the hearing.

Preliminary Issue – Service of Landlord's Application

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package by way of registered mail. The landlord stated that it was served on October 20, 2018 then on November 1, 2018. I notified the landlord that both dates were before the notice of hearing was generated on November 8, 2018. The landlord had his cousin call the landlord's wife during the hearing to obtain the date and Canada Post tracking number. The landlord was unable to provide another date for service or a Canada Post tracking number. The landlord did not provide any Canada Post receipts with his application.

Section 89(1) of the *Act* outlines the methods of service for an application for dispute resolution, which reads in part as follows (my emphasis added):

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 documents].*

I find that the landlord was unable to provide a proper date, Canada Post receipt or tracking number to confirm service of his application to the tenant. The tenant did not appear at this hearing to confirm receipt of the landlord's application.

Accordingly, I find that the landlord failed to prove service in accordance with section 89(1) of the *Act* and the tenant was not served with the landlord's application.

At the hearing, I informed the landlord that I was dismissing his application with leave to reapply, except for the filing fee and the order of possession. The landlord confirmed that he did not require an order of possession because the tenant had vacated the rental unit and he had obtained possession of it. I notified the landlord that he would be required to file a new application and pay a new filing fee, if he wished to pursue this matter further. I cautioned him that he would have to prove service at the next hearing, including the date and method of service.

For the landlord's information, RTB Policy Guideline 12 states the following, in part (my emphasis added):

*Registered mail includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a **named person** is available.*

*Proof of service by Registered Mail should include the original Canada Post Registered Mail **receipt containing the date of service, the address of service, and that the address of service was the person's residence at the time of service**, or the landlord's place of conducting business as a landlord at the time of service as well as a **copy of the printed tracking report**.*

Conclusion

The landlord's application for an order of possession and to recover the filing fee is dismissed without leave to reapply.

The remainder of 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 17, 2018

Residential Tenancy Branch