



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL MNRL OPR**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for possession under a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“Ten-Day Notice”) pursuant to section 55;
- A monetary award for unpaid rent and utilities pursuant to section 67; and
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord was present at the commencement of the hearing and there was no one appearing for the tenant. I kept the teleconference line open from the time the hearing was scheduled, plus an additional fifteen minutes, to allow the tenant the opportunity to call. The teleconference system indicated that the tenant did not call into the hearing. I confirmed that the Notice of Hearing provided the correct call-in numbers and participant codes.

The landlord was given an opportunity to provide affirmed testimony. At the start of the hearing, I asked the landlord for his evidence of service of the Notice of Dispute Resolution Proceeding on the tenant. The landlord initially testified that he served the Notice of Dispute Resolution on the tenant by text message. I inquired further as to whether the landlord served the complete Notice of Dispute Resolution Proceeding on the tenant and he stated that he served the Notice of Application for Dispute Resolution in October 2018.

The landlord’s response was not accurate because the Notice of Dispute Resolution Proceeding could not be available for service until after the Notice of Dispute Resolution was filed. Since the landlord’s application was filed on November 26, 2018, the Notice

of Dispute Resolution Proceeding package could not have been available for service in October 2018 as the landlord testified.

I asked the landlord if he could state the specific day in October on which he served the Notice of Application for Dispute Resolution on the tenant and he testified that he served it towards the end of October 2018. I then asked the landlord how he served the Notice of Application for Dispute Resolution on the tenant and the landlord disconnected from the conference call without providing a response and before I could obtain adequate evidence to satisfy myself that the Notice of Dispute Resolution had been properly served on the tenant in accordance with the *Act*. I kept the teleconference line open for an additional eleven minutes, to allow the landlord the opportunity to call back. The teleconference system indicated that the landlord did not call back into the hearing, and that I was the only person on the conference call.

Issue(s) to be Decided

- Is the landlord entitled to an order of possession pursuant to section 46 of the *Act*?
- Is the landlord entitled to a monetary order for outstanding rent and utilities pursuant to section 67 of the *Act*?
- Is the landlord entitled to retain the security deposit pursuant to section 72 of the *Act*?
- Is the landlord entitled to reimbursement of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The landlord filed this application on November 26, 2018 requesting an order of possession and a monetary order for rent arrears. In the application, the landlord stated that the tenancy agreement stated a monthly rent of \$2,6000.00. The landlord did not provide a copy of the tenancy agreement or any testimony in support of these contentions.

In his application, the landlord stated that the tenant owes \$1,600.00 in rent for July 2018 and \$2,600.00 per month for each of the months of August, September, October and November. The landlord did not provide any evidence in support of these contentions.

The landlord's Application for Dispute Resolution also states that there was damage inside the house which the landlord wants to be compensated for. The Application for Dispute Resolution contends that drywall had been removed, carpets were stained, the living room floor was severely damaged and the floor in the garage had paint spills. However, the landlord again did not provide any evidence in support of these contentions.

The landlord's Application for Dispute Resolution also stated that he had served the tenant with 10 Day Notice to End Tenancy for Unpaid Rent (the "Ten-Day Notice") on October 11, 2018. The landlord did not provide a copy of the Ten-Day Notice but he did submit a video which appears to show someone attempting to serve a document. The landlord did not provide any other evidence in support of the contention that he served the Ten-Day Notice.

The landlord filed an amendment to his Application for Dispute Resolution on November 29, 2018 which updated the landlord's address for service.

As stated above, the landlord abruptly disconnected from the hearing while I was asking about the service of his Application for Dispute Resolution. The landlord initially testified that he served the Notice of Dispute resolution on the tenant by text message. The landlord then testified that he served the Application for Dispute Resolution in October 2018. The landlord disconnected after I asked further question regarding service of the Application for Dispute Resolution.

Analysis

Residential Tenancy Branch Rules of Procedure 3.1 states that the Notice of Application of Dispute Resolution Proceeding package must be served on the respondent within three days that the package is available from the Residential Tenancy Branch.

Pursuant to section 89 of the *Act*, the methods for service of the Notice of Dispute Application are:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with 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; or
- (e) as ordered by the director under section 71

A text message is not a valid method of service of Notice of Dispute Application under section 89 of the *Act*.

Residential Tenancy Branch Rules of Procedure 3.5 states that the applicant must be prepared demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the *Act* and these Rules of Procedure.

I find that the landlord did not provide satisfactory evidence of the service of Notice of Application for Dispute Resolution on the tenant before he disconnected. Accordingly, this application is dismissed with leave to reapply. The tenancy shall continue until it is ended in accordance with the *Act*.

Conclusion

I order the landlord's application be 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: January 16, 2019

Residential Tenancy Branch