



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL PROVIDENCE MANAGEMENT and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes **FFL MNRL-S OPC OPR**

Introduction

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

- an Order of Possession for non-payment of rent and for a breach of a material term of the tenancy pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:41 a.m. to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m.

The landlord attended the hearing, represented by SA ("landlord"). The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. 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 and I were the only ones who had called into this teleconference.

Preliminary Issue – Service of Notice of Hearing/Application for Dispute Resolution Proceedings

At the hearing, the landlord testified that the Notice of Hearing/Application for Dispute Resolution Proceedings were personally served to the tenant on December 24, 2018 by

somebody other than herself. When I asked whether the personal service was witnessed, the landlord testified that it is unknown. The landlord could not advise of the time or the location of service. The person who was said to have personally served the notice of hearing package was not called to testify.

Section 89 of the *Act* establishes the following Special Rules for certain documents, which include an application for dispute resolution:

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]...*

The Residential Tenancy Branch Policy Guideline PG-12 provides guidance regarding service of document provisions in the *Act*. Part 15 of PG-12 speaks specifically to proof of service.

15. PROOF OF SERVICE

Where the respondent does not appear at a dispute resolution hearing, the applicant must be prepared to prove service of the notice of hearing package. Proof of service of other documents may be submitted in support of claims for dispute resolution in accordance with the Rules of Procedure.

Where proof of service is required, the person who actually served the documents must either:

- be available as a witness in the hearing to prove service, or
- provide a signed statement with the details of how the documents were served.

Proof of service personally should include the date and time of service, the location where service occurred, description of what was served, the

name of the person who was served, and the name of the person who served the documents.

...

Failure to prove service may result in the matter being dismissed, with or without leave to reapply. Adjournments to prove service are given only in unusual circumstances.

Based on the landlord's lack of evidence regarding service, I am not satisfied that the tenant was properly served with copies of the landlord's notice of hearing and application for dispute resolution. Consequently, I dismiss this application with leave to reapply.

Conclusion

I dismiss the landlord's application with leave to reapply. Leave to reapply does not extend any deadlines established pursuant to the *Act*, including the deadlines for applying for dispute resolution or for returning security deposits at the end of a tenancy.

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: February 04, 2019

Residential Tenancy Branch