



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PRIME PROPERTIES LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, MNDL-S, OPRM-DR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on January 31, 2019 (the "Application"). The Landlord sought an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The Landlord also sought to recover unpaid rent and reimbursement for the filing fee. This was a direct request proceeding that was adjourned to a participatory hearing.

The Landlord filed an Amendment dated March 5, 2019 increasing the monetary amount to \$2,607.23 for damage to the rental unit.

The Agent appeared at the hearing for the Landlord. Nobody attended for the Tenants. I explained the hearing process to the Agent who did not have questions about the process when asked. The Agent provided affirmed testimony.

The Agent confirmed the Landlord was no longer seeking an Order of Possession as the Tenants had vacated the rental unit.

The Landlord submitted evidence prior to the hearing. The Tenants did not. I addressed service of the hearing package and evidence.

The Agent testified that the hearing package and evidence were sent to the Tenants by registered mail on February 8, 2019. Two Canada Post receipts were submitted as evidence. The receipts have Tracking Number 1 and Tracking Number 2 on them. I looked these up on the Canada Post website which shows the packages were unclaimed and returned to the sender.

The Agent testified that the Tenants vacated the rental unit February 7, 2019. The packages were sent to a PO Box. The Agent testified that this PO Box was provided by the Tenants. At first, the Agent testified that the Tenants provided this in August or September of 2018. The Agent said he thought the PO Box was provided in writing. The Agent then testified that it was provided October 26, 2018. The Agent advised that he did not submit evidence showing the Tenants provided this address in October. The Agent advised that he did not have any evidence showing the Tenants could still be reached at this PO Box. The Agent advised that the Tenants did not provide a forwarding address.

In relation to the Amendment, the Agent testified that this was sent to the Tenants at the same PO Box by registered mail on March 10, 2019. The Agent said evidence of this was submitted; however, I could not locate this during the hearing. The Agent could not find the tracking numbers for the Amendment.

Section 89(1) of the *Residential Tenancy Act* (the “*Act*”) sets out the permitted methods of service for an application for dispute resolution for monetary compensation and states:

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].

[emphasis added]

The Rules of Procedure (the “Rules”) state the following:

3.5 Proof of service required at the dispute resolution hearing

At the hearing, the applicant must be prepared to 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.

4.6 Serving an Amendment to an Application for Dispute Resolution

As soon as possible, copies of the Amendment to an Application for Dispute Resolution and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by section 89 of the Residential Tenancy Act...and these Rules of Procedure.

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution and supporting evidence as required by the Act and these Rules of Procedure.

In any event, a copy of the amended application and supporting evidence should be served on the respondents as soon as possible and must be received by the respondent(s) not less than 14 days before the hearing.

[emphasis added]

I was not satisfied that the Application or Amendment were served in accordance with the *Act* or Rules for the following reasons.

The hearing package and evidence were sent to the Tenants the day after they vacated the rental unit. The packages were sent to a PO Box provided to the Landlord more than three months prior. The Agent did not point to any evidence showing the Tenants provided this PO Box as their mailing address in October of 2018. The Landlord did not have any evidence that this continued to be a mailing address that the Tenants could be reached at. There is no evidence before me that the Tenants received the packages and in fact the evidence shows the Tenants did not receive the packages as they were

unclaimed and returned to the sender. I am not satisfied that the PO Box used is an address that the Tenants can be reached at.

Section 89(1) of the *Act* required the hearing packages to be sent to the Tenants' residence or a forwarding address provided by the Tenants. The PO Box is neither. Therefore, I do not find it appropriate to deem the packages received in the absence of evidence that the PO Box is currently an address at which the Tenants can be contacted or that the Tenants in fact received the packages.

The Amendment was not served in accordance with section 89 of the *Act* as required as it was sent to the PO Box which is neither the Tenants' residence nor a forwarding address provided by the Tenants. I note the same concerns about the PO Box as set out above. The Landlord submitted no evidence showing the Amendment was served as stated and the Agent could not provide the tracking number for the Amendment packages.

Further, the Agent testified that the Amendment was sent to the Tenants March 10, 2019. Assuming this is accurate, this was five days after the Amendment was dated and more than a month after the Tenants vacated the rental unit. I would expect a landlord to file an Amendment increasing the amount of monetary compensation for damage to the rental unit prior to 16 days before the hearing when the Tenants vacated six weeks prior to the hearing. The Amendment was not sent to the Tenants until 11 days prior to the hearing. This does not comply with rule 4.6 of the Rules. This is particularly so when the Amendment could only have been deemed received by the Tenants March 15, 2019, less than a week before the hearing.

In the circumstances, the Landlord has failed to prove service in accordance with the *Act* and Rules in relation to the Application and Amendment. Therefore, the Application and Amendment are dismissed with leave to re-apply.

Conclusion

The Application and Amendment are dismissed with leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: March 21, 2019

Residential Tenancy Branch