



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNRL, FFL, MT, CNC

Introduction

This was a cross application hearing that dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- more time to cancel a Notice to End Tenancy, pursuant to section 66; and
- cancellation of the One Month Notice to End Tenancy, pursuant to section 47.

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

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55;
- an Order of Possession for Cause, pursuant to sections 47 and 55;
- a Monetary Order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

Preliminary Issue- Attendance

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:16 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. 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. 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.

Rule 7 of the Rules of Procedure provides as follows:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Based on the above, **in the absence of any evidence or submissions from the tenant I order the tenant's application dismissed without liberty to reapply.**

Preliminary Issue- Service

The landlord testified that she did not serve her notice of application for dispute resolution on the tenant because the Residential Tenancy Branch did not provide her with a copy.

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]...*

Regardless of the reason the landlord did not serve the tenant, the fact remains that the tenant was not served and did not have notice of the claims made against him by the landlord. Notice of the claims being made against you and the opportunity to respond is a fundamental tenant of our legal system and the service requirement is clearly set out in section 89 of the *Act*. I find that the landlord did not serve the tenant in a manner required by section 89(1) of the *Act*. At the hearing, I advised the landlord that I was dismissing her application with leave to reapply.

I notified the landlord that if she wished to pursue this matter further, she would have to file a new application. I cautioned her to be prepared to prove service at the next hearing, as per section 89 of the *Act*. I notified the landlord that she could consult an information officer at the Residential Tenancy Branch for information regarding the *Act* or the hearing process.

Conclusion

The landlord's application is dismissed with leave to reapply.

The tenant's application is dismissed without 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: March 04, 2019

Residential Tenancy Branch