



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, FFL

Introduction

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

- an Order of Possession for unpaid rent pursuant to section 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.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:41 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and 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. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

At the hearing, the landlord's agent (the agent) testified that the landlord received a text message from the landlord on March 4, 2019, to confirm that the tenant had vacated the rental unit. As the landlord now has possession of the rental unit, the agent withdrew the landlord's application to obtain an Order of Possession. This portion of the landlord's application is hereby withdrawn.

Preliminary Issue - Service of Dispute Resolution Hearing Package

The agent provided sworn testimony supported by written evidence that on March 8, 2019, they sent the tenant a copy of the dispute resolution hearing package by Canada Post's Expedited Parcels service, a service that in this case required a signature from

the recipient. The agent testified that they sent this package to the tenant at the address of the rental unit, as the tenant had not provided the landlord with a forwarding address. The agent testified that this package was returned by Canada Post as "Returned to Sender".

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]...*

Section 15 of Residential Tenancy Branch Policy Guideline 12 on Service Provisions reads in part as follows:

...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...

In this case, the agent gave sworn testimony that the dispute resolution hearing package was sent to the tenant at an address where the landlord (and the agent) knew that the tenant was no longer residing. Under these circumstances, I find that the dispute resolution hearing package, including the Notice of Hearing, were not served to the tenant in accordance with the provisions of paragraph 89(1)(c) of the *Act* because the tenant no longer resided at the address where the package was sent on March 8, 2019. I therefore dismiss the landlord's application for a monetary award with leave to reapply.

Conclusion

The landlord's application for an Order of Possession is withdrawn.

The landlord's application for a monetary award 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: April 25, 2019

Residential Tenancy Branch