



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

On March 29, 2019, an adjudicator appointed pursuant to the *Residential Tenancy Act* (the *Act*) issued an Interim Decision regarding the landlord's application using the direct request process for the following:

- 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 tenants pursuant to section 72.

As the Adjudicator was not satisfied that all of the information required for consideration of the landlord's application by way of the ex parte hearing provided pursuant to the Residential Tenancy Branch's direct request procedure had been submitted, the Adjudicator adjourned the landlord's application to a participatory hearing by an arbitrator. I have subsequently been delegated responsibility pursuant to the *Act* to convene the participatory hearing to consider the landlord's application.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:44 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.

Preliminary Issue - Service of Documents

The landlord gave sworn testimony that the tenant vacated the rental unit by the end of March 2019, without leaving the landlord their keys to access the rental suite. The landlord said that they now have possession of the rental unit and have changed the locks to the rental unit. As the landlord no longer needs an Order of Possession that portion of the landlord's application is withdrawn.

The landlord provided sworn testimony supported by written evidence that on April 4 2019, they sent the tenant a copy of the dispute resolution hearing package and written evidence by registered mail. The landlord said that this material was sent to the tenant at the address of the rental unit, as the tenant had not provided the landlord with a forwarding address. The landlord provided a copy of the Canada Post Tracking Number to confirm this registered mailing. The landlord testified that this package was returned by Canada Post.

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 landlord gave sworn testimony that the dispute resolution hearing package and written evidence was sent to the tenant at an address where the landlord 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 April 4, 2019. I therefore dismiss the landlord's application for a monetary award with leave to reapply.

Conclusion

The landlord's application for a monetary award is dismissed with leave to reapply.

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

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: May 14, 2019

Residential Tenancy Branch