



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NEW CHELSEA SOCIETY
and [tenant name suppressed to protect privacy]

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 sections 46 and 55 of the *Act*;
- a Monetary Order for unpaid rent pursuant to section 67 of the *Act*; and
- recovery of the filing fee from the tenant pursuant to section 72 of the *Act*.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:47 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:00 a.m. The landlord's agent D.D. attended the hearing on behalf of the housing society landlord 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 Dispute Resolution Proceeding. I also confirmed from the teleconference system that the landlord's agent and I were the only ones who had called into this teleconference.

Preliminary Issue – Amendment to the Landlord's Application for Dispute Resolution

At the outset of the hearing, the landlord's agent explained that the tenant identified himself by a secondary first name. Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the landlord's application to include tenant's legal first name and an "also known as" with the tenant's secondary name used by the tenant.

As only the landlord's agent attended the hearing, I asked the landlord's agent to confirm that he had served the tenant with the Notice of Dispute Resolution Proceeding for this hearing. The landlord's agent testified that the tenant was served with the notice of this hearing by posting it on the tenant's rental unit door on June 17, 2019.

Section 89(2) of the *Act* allows for a Notice of Dispute Resolution Proceeding in relation to an Order of Possession to be served by attaching a copy to the door, but it does not allow for service in this manner in relation to a monetary claim.

Further, the landlord had not submitted a Proof of Service to confirm service of the notice of hearing, and the staff members who posted and witnessed the notice of hearing posted to the tenant's door were not available to provide testimony of the service.

Rule 3.5 of the Residential Tenancy Branch Rules of Procedure requires:

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.

Residential Tenancy Branch Policy Guideline #12. Service Provisions provides a further explanation regarding proof of service, in part, as follows:

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.

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 matter, the respondent did not attend the hearing to confirm receipt of the notice of this hearing, and the applicant, who was the landlord in this matter, was unable to provide proof of service of the Notice of Dispute Resolution Proceeding package.

For these reasons, I am not satisfied that the tenant has been sufficiently served with the Notice of Dispute Resolution Proceeding as required by the *Act*.

Therefore, I dismiss the landlord's application in its entirety with leave to reapply due to a service issue. I note this decision does not extend any applicable time limits under the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to recover the filing fee?

Conclusion

The landlord's application is dismissed in its entirety with leave to reapply due to a service issue. This decision does not extend any applicable time limits under the *Act*.

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: July 26, 2019