



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (“*Act*”), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an order of possession for cause, pursuant to section 55; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 16 minutes. 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.

The landlord confirmed that he served the tenant with a copy the landlord’s application for dispute resolution hearing package on May 19, 2019, by way of registered mail. The landlord provided a Canada Post tracking number verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord’s application on May 24, 2019, five days after its registered mailing.

The landlord testified that the tenant was served with a copy of the landlord’s 1 Month Notice to End Tenancy for Cause, dated March 4, 2019 (“1 Month Notice”) on the same date, by way of posting to the tenant’s rental unit door. When I questioned the landlord as to his proof of service which indicates that the notice was served on March 3, 2019, the landlord changed his testimony to state that it was served on March 3. When I asked how the notice was served on March 3, before the date of the notice which was March 4, the landlord claimed that he could not remember because it was too long ago.

I find that the landlord failed to prove service of the 1 Month Notice in accordance with section 88 of the *Act*. The landlord could not recall the exact date of service, providing March 3 and 4, 2019. If the notice was served on March 3, it was before the date of the notice of March 4. Therefore, I find that the tenant was not served with the landlord's 1 Month Notice.

Accordingly, if the tenant was not served with the 1 Month Notice, I cannot examine or determine the reasons on the 1 Month Notice. The landlord's application for an order of possession for cause is dismissed with leave to reapply.

Since I could not determine this claim on its merits, the landlord's application to recover the \$100.00 filing fee is dismissed without leave to reapply.

Conclusion

The landlord's application to recover the \$100.00 filing fee is dismissed without leave to reapply.

The remainder of the landlord's application 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: July 04, 2019

Residential Tenancy Branch