



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPRM-DR, 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 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, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 21 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.

Preliminary Issue – Direct Request Proceeding and Service

This hearing was originally scheduled as a direct request proceeding, which is a non-participatory hearing. An “interim decision,” dated June 18, 2018, was issued by an Adjudicator for the direct request proceeding. The interim decision adjourned the direct request proceeding to this participatory hearing.

The landlord was required to serve the tenant with a copy of the interim decision, the notice of reconvened hearing and all other required documents, within three days of receiving it, as outlined in the interim decision itself.

The landlord did not state when he received the interim decision. He claimed that he served the above documents to the tenant on July 17, 2019, by way of registered mail. The landlord provided a Canada Post tracking number verbally during the hearing.

When I asked the landlord why the documents were served almost one month after the date of the interim decision, rather than three days, the landlord stated that this was a new hearing and he served as he was supposed to do so.

When I looked up the Canada Post tracking number on the online website, it indicated that the documents were sent on July 15, 2019. When I questioned the landlord about the date he provided of July 17, 2019, he claimed that he read the receipt wrong and it was actually July 15, 2019.

I find that the tenant was not served with the interim decision and notice of reconvened hearing in accordance with the deadline indicated in the interim decision of June 18, 2019. If the tenant was deemed to have received the above documents on July 20, 2019, five days after their registered mailing on July 15, 2019, as per section 90 of the *Act*, this is only 12 days before this hearing date, not including the service date or the hearing date. The landlord's evidence is due at least 14 days prior to the hearing date, as per Rule 3.14 of the Residential Tenancy Branch *Rules of Procedure*. I also note that the landlord initially provided an incorrect date of service and only corrected this information once I notified him that I had looked up the Canada Post tracking number online.

I notified the landlord that his application was dismissed with leave to reapply, except for the filing fee. I informed him that he would be required to file a new application, pay another filing fee and provide proof of service at the next hearing, if he chooses to pursue this matter further.

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: August 02, 2019

Residential Tenancy Branch