



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT OPT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order of possession for the tenant pursuant to section 54;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Both parties attended and had the opportunity to provide affirmed testimony.

Preliminary Issue:

At the outset of the hearing, the landlord stated he had not been served with any of the tenant's documents as required under section 89. The landlord denied receiving the Notice of Hearing and evidence package. The landlord stated he attended the hearing because of a reminder email automatically generated by the RTB.

The tenant testified that he sent the Notice of Hearing and evidence package to an address for the landlord set out in the tenancy agreement. The tenant submitted a copy of an addressed envelope; the landlord stated the address thereon was **not** his address. The landlord said that his address in the tenancy agreement was in a different city and that the tenant was aware of where he lived.

The tenant did not submit a copy of the tenancy agreement or a tracking number in support of service by registered mail.

The landlord provided testimony that he wanted to see the evidence upon which the tenant relied and to have an opportunity to refute the tenant's claims. The landlord stated that the tenant had vacated the unit and that he had received advice from the RTB and the local police that the tenant's actions amounted to abandonment of the unit. The landlord stated had documentary evidence he wished to present which were essential to an understanding of the situation.

The landlord further testified that the landlord believed the tenant had abandoned the unit. The landlord stated he had been informed by the police that the tenant had fled the area because of outstanding arrest warrants and civil proceedings. The landlord stated that he has police reports to submit as evidence including allegations that there were "squatters" in the unit who were arrested when the landlord attended at the unit in the company of the police. The landlord stated he also had important documentary evidence such as rental ledgers.

Service of dispute resolution documents is set out in section 89 of the *Act* which states [emphasis added]:

89 (1) An application for dispute resolution ... 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) ...*

I find the landlord has failed to establish that the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution as required under the provisions of section 89. Other than a photograph of an envelope, the tenant has not submitted supporting documentary evidence for his verbal assertion, denied by the landlord, that the tenant served the landlord by mail.

Accordingly, I dismiss the tenant's application against the landlord with leave to reapply.

Conclusion

The tenant'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: October 03, 2019

Residential Tenancy Branch