



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDL-S MNRL-S OPR

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 and for compensation for damage or loss, pursuant to section 67 of the *Act*; and
- recovery of the cost of the filing fee for this application from the tenant.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:14 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord's agent M.K. and K.L. attended on behalf of the corporate landlord and were given an opportunity to present sworn testimony. 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 agents and I were the only ones who had called into this teleconference.

Preliminary Issue – Service of the Landlord's Application for Dispute Resolution

As the tenant did not attend the hearing, I asked the landlord's agents to confirm that the tenant had been served with the Notice of Dispute Resolution Proceeding for this hearing. The landlord's agent K.L. testified that the tenant was served on November 3, 2019 with the Notice of Dispute Resolution Proceeding package for this hearing, which included the landlord's application for an Order of Possession and Monetary Order for unpaid rent and compensation for damages, by posting the package

on the tenant's rental unit door. Landlord's agent M.K. testified that he witnessed this service. Landlord's agent M.K. confirmed that the landlord failed to submit any evidence for this hearing.

Section 89 of the *Act* sets out "special rules" for the service of certain documents. Section 89(1) of the *Act* requires that an application for dispute resolution be served to the other party in person, by registered mail, or as ordered by the Residential Tenancy Branch director.

Section 89(2) of the *Act* allows for an exception to the above-noted rules when a landlord is serving a tenant with an application for dispute resolution for an Order of Possession. In such cases, the landlord may serve the application to the tenant by attaching it to the tenant's door or other conspicuous place at the address where the tenant resides.

As the landlord's agent served their application by attaching it to the tenant's door, I find that the landlord's agent has not served the tenant with the application for dispute resolution in relation to the request for a Monetary Order in accordance with section 89(1) of the *Act*. As such, the landlord's application for a Monetary Order is dismissed with leave to reapply due to an issue with service of documents.

Given that section 89(2) of the *Act* allows for an application for an Order of Possession to be served by attaching to the tenant's door, I must determine when the application was deemed served on the tenant.

Section 90 of the *Act* sets out when documents that are not personally served are considered to have been received. Unless there is evidence to the contrary, a document is considered or 'deemed' received on the third day after it is attached to a door or other conspicuous place.

Therefore, based on the testimony and the evidence before me, I find that the tenant was deemed served with the landlord's Notice of Dispute Resolution Proceeding package on November 6, 2019, the third day after it was attached to the tenant's door, in accordance with sections 89(2) and 90 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to recovery of the filing fee for this application from the tenant?

Background and Evidence

Landlord's agents provided the following testimony:

- This tenancy began June 1, 2018
- Monthly rent is \$2,000.00
- The tenant has failed to pay rent and has caused considerable issues in the building.
- The tenant was served with a Notice to End Tenancy in October 2019.

The landlord's agent M.K. explained there was an oversight that resulted in no evidence being submitted for this hearing. Therefore, there was no copy of the notice to end tenancy agreement before me to establish the agreed upon rent and terms of the tenancy, nor was there a monetary order worksheet or a rent ledger to support the landlord's application for an Order of Possession on the basis of unpaid rent.

Analysis

A tenant who receives a 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) under section 46 of the *Act* has five days after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

Section 55 of the *Act* provides that I must consider if the landlord is entitled to an order of possession if the tenant fails to dispute the Notice, and is therefore conclusively presumed to have accepted the effective vacancy date of the Notice, and if the landlord has issued a notice to end tenancy that is compliant with section 52 of the *Act*.

In the matter at hand, a copy of the 10 Day Notice was not submitted into evidence. Therefore, I am unable to find that the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*, as the 10 Day Notice was not submitted into evidence for my review to determine if it complied with the requirements of section 52 of the *Act*.

Conclusion

The landlord's request for an Order of Possession pursuant to section 55 of the *Act* is declined as the landlord was unable to prove that the 10 Day Notice complied with the form and content requirements of section 52 of the *Act*.

The landlord's request for a monetary order was dismissed with leave to reapply due to improper service of notice.

The landlord must bear the costs of the filing fee as the landlord was unsuccessful in this Application.

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: November 22, 2019

Residential Tenancy Branch