



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OP, MNRL, FFL / CNR

Introduction

This was a cross application hearing that dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the 10 Day Notice to End Tenancy, pursuant to section 46.

This hearing also 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;
- a Monetary Order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

Landlord P.T. and the tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Preliminary Issue- Service

Both parties agree that the subject rental property is a house with a lower suite. The tenants live in the lower suite and the landlords live in the main portion of the house. Both parties agree that all mail for both suites is delivered to the landlords' suite and the landlords then give the tenants their mail.

Landlord P.T. testified that she served the tenants with her application for dispute resolution via registered mail on September 24, 2019. A Canada Post receipt for same was entered into evidence. Landlord P.T. testified that she received the Canada Post

pick up slip for the above registered mailing and posted it on the tenants' door. The tenants testified that they did not receive the Canada Post pick up slip and were not served with the landlords' application for dispute resolution. The landlords did not enter into evidence a proof of service document pertaining to the Canada Post pick up slip.

The tenants testified that they served the landlords' parents, who reside with the landlords, with their application for dispute resolution. No proof of service documents to evidence this service were entered into evidence. Landlord P.T. testified that she did not receive the tenants' application for dispute resolution.

Section 89 of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution:

89(1) An application for dispute resolution,...when required to be given to one party by another, 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) [director's orders: delivery and service of document]...*

I find that the landlords did not serve the tenants in a manner required by section 89(1) of the *Act* because the registered mail was not sent directly to the tenants' residence, but to the landlords' residence. I find that the landlords failed to prove that the tenants' received the Canada Post pick up slip and therefore failed to prove that the tenants were properly served under section 89 of the *Act*.

I find that the tenants failed to prove that the landlords were served with the tenants' application for dispute resolution as no proof of service documents were entered into evidence and landlord P.T. denied receiving it.

I notified both parties that if they wished to pursue these matters further, they would have to file a new application. I cautioned them to be prepared to prove service at the next hearing, as per section 89 of the *Act*.

Conclusion

I dismiss the landlords' application to recover the \$100.00 filing fee without leave to reapply. The remainder of the landlords' application is dismissed with leave to reapply.

The tenants' 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: November 22, 2019

Residential Tenancy Branch