



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL 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 and to retain the security deposit for unpaid rent pursuant to section 67 of the *Act*; and
- recovery of the filing fee from the tenant pursuant to section 72 of the *Act*.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 2:15 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:00 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. 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, the landlord's witness and I were the only ones who had called into this teleconference.

Preliminary Issue – Service of the Notice of Dispute Resolution Proceeding Package

As only the landlord attended the hearing, I asked the landlord to confirm that the tenant was served with the Notice of Dispute Resolution Proceeding and evidence for this hearing. The landlord called her agent J.G. to provide witness testimony regarding the service of documents for this matter.

Witness J.G. testified that on October 3, 2019 at approximately 3:00 p.m., she personally served the tenant with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent at the rental unit. The landlord submitted into documentary evidence a #RTB-34 "Proof of Service" form signed by the witness in support of the witness' testimony.

Witness J.G. testified that on October 24, 2019 at approximately 4:30 p.m., she personally served the tenant with a "72 hour notice to pay rent" at the rental unit. The landlord submitted into documentary evidence a hand-written statement from the witness, dated October 24, 2019, confirming that the witness hand delivered to the tenant "a 72 hour notice to either pay the rent owing, or the vacate the premises." The landlord also uploaded a video of the witness personally delivering an envelope to the tenant.

Rule 3.5 of the Residential Tenancy Branch Rules of Procedure requires:

3.5 Proof of service required at the dispute resolution hearing

*At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the **Notice of Dispute Resolution Proceeding Package and all evidence** as required by the Act and these Rules of Procedure.*

[My emphasis added]

In this matter, the landlord's witness failed to provide any testimony or documentary evidence to demonstrate that the tenant was served with the Notice of Dispute Resolution Proceeding Package and the landlord's evidence. The witness only provided testimony regarding service of the 10 Day Notice to End Tenancy for Unpaid Rent and a "72 hour notice".

As such, I am not satisfied that the tenant has been sufficiently served with the Notice of Dispute Resolution Proceeding Package and evidence as required by the Act.

Therefore, I dismiss the landlord's application in its entirety with leave to reapply due to a service issue. I note this decision does not extend any applicable time limits under the Act.

The landlord must bear the costs of the filing fee for this Application.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order and to retain the security deposit for unpaid rent?

Is the landlord entitled to recover the filing fee?

Conclusion

The landlord's application is dismissed in its entirety with leave to reapply due to a service issue. This decision does not extend any applicable time limits under the *Act*.

The landlord must bear the costs of the filing fee for 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 25, 2019

Residential Tenancy Branch