



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL-S, MNDL-S, MNRL-S, OPR

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on September 25, 2019, in which the Landlord sought the following relief:

- monetary compensation from the Tenant for unpaid rent and damage to the rental unit;
- an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on September 9, 2019 (the "Notice");
- authority to retain the Tenant's security deposit; and,
- recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for teleconference at 11:00 a.m. on December 9, 2019. Both parties called into the hearing; the Landlords were represented by an Agent and the Tenant appeared on her own behalf.

Preliminary Matter—Service of the Application

At the outset of the hearing the Landlord's Agent confirmed the Tenant had vacated the rental unit "some time in September".

The Tenant stated that she did not receive the Landlord's evidence, Notice of Hearing or Application; she testified that the first time she became aware of the hearing was when she received an email from the Residential Tenancy Branch reminding her of evidence submission deadlines.

The Landlord's Agent testified that the Application, Notice of Hearing and Landlord's evidence were posted to the rental unit door.

A review of Branch records confirms the Notice of Hearing was dated September 30, 2019. As such it would not have been possible for the Tenant to receive this material as she had already vacated the rental unit at the time it was posted to the rental unit door.

Further, service by posting to the rental unit door is effective service of an Application for an Order of Possession, but is insufficient for a Monetary Order pursuant to section 89 of the *Residential Tenancy Act*; for greater clarity, I reproduce this section as follows:

Special rules for certain documents

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, 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 documents*].

(2) An application by a landlord under section 55 [*order of possession for the landlord*], 56 [*application for order ending tenancy early*] or 56.1 [*order of possession: tenancy frustrated*] must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by registered mail to the address at which the tenant resides;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;

(e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

(3) A notice under section 94.21 [*notice of administrative penalty*] must be given in a manner referred to in subsection (1).

As such, I find the Landlord failed to serve the Tenant with notice of the hearing as required by the *Act*.

Conclusion

The Tenant vacated the unit such that an Order of Possession is no longer required. The Landlord's claim for such an Order is dismissed without leave to reapply.

The Landlord served the Tenant with the Notice of Dispute Resolution Hearing by posting to the door after the Tenant had vacated the rental unit. Posting to the rental unit door is only effective for an Order of Possession pursuant to section 89(2) and not for a request for a Monetary Order. Consequently, the Landlord's request for a Monetary Order, and authority to retain the Tenant's security deposit, is dismissed with leave to reapply.

The Tenant provided her forwarding address during the hearing. I have recorded it on the unpublished cover page of this my Decision. The parties are reminded of the strict timelines imposed by section 38 of the *Residential Tenancy Act*.

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: December 09, 2019

Residential Tenancy Branch