



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- An order of possession pursuant to section 55; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 10 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The landlord was represented by their agent (the "landlord") who was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

This periodic tenancy began sometime in 2016. The current monthly rent is \$750.00 payable on the first of each month. A security deposit of \$300.00 is currently held by the landlord.

The landlord issued a 1 Month Notice to End Tenancy dated September 5, 2019, served personally on the tenant on that date. The reasons provided on the 1 Month Notice for the tenancy to end are:

Tenant or a person permitted on the property by the tenant has:

- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *put the landlord's property at significant risk.*

Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord testified that the named landlord served the tenant with the notice of application and evidence personally on October 26, 2019.

The landlord submits in their application that the tenant "has been getting garbage from trash cans and bringing the items into the house and filling them in boxes which causes a health and safety risk since he does not clean the home it has caused permanent damages with the excess dirt and bugs. He is not willing to pay/clean/fix the damages. He left the stove on and the door open frequently when he leaves the home which causes a fire hazard and a risk of danger and theft.

Analysis

Section 89(1) 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]...

Residential Tenancy Policy Guideline 12 provides that:

Where the respondent does not appear at a dispute resolution hearing, the applicant must be prepared to prove service of the notice of hearing package...

Proof of service personally should include the date and time of service, the location where service occurred, description of what was served, the name of the person who was served, and the name of the person who served the documents.

While the landlord provided some information regarding the personal service on the tenant, I find that the testimony was vague and lacking details. The named landlord who performed service did not appear to testify, did not submit a signed Proof of Service nor is there any documentary evidence in support of the landlord's submissions. Based on the minimal evidence submitted by the landlord, I find that I am not satisfied that the tenant was served in a manner consistent with the Act or at all. Consequently, I dismiss the landlord's application as against the tenant with leave to reapply.

Conclusion

The landlord'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: December 13, 2019

Residential Tenancy Branch