



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR

Introduction

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

- an Order of Possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67.

The two tenants did not attend this hearing, which lasted approximately 18 minutes. The landlord and her agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord's agent confirmed that she had permission to represent the landlord at this hearing.

Preliminary Issue – Direct Request Proceeding and Service

This hearing was originally scheduled as a direct request proceeding, which is a non-participatory hearing. An "interim decision," dated December 3, 2019, was issued by an Adjudicator for the direct request proceeding. The interim decision adjourned the direct request proceeding to this participatory hearing. The landlord was required to serve the tenants with a copy of the interim decision, the notice of reconvened hearing and all other required documents, within three days of receiving it, as outlined in the interim decision itself.

The landlord's agent did not know when the landlord received the interim decision. She stated that she personally served the above documents to both tenants at the rental unit on December 7, 2019, and her brother witnessed this service. In accordance with section 89 of the *Act*, I find that both tenants were personally served with the above documents on December 7, 2019.

The landlord's agent stated that the original application for direct request proceeding, direct request worksheet, and evidence package was personally served to the tenants on December 5, 2019. When I asked why it was not served within three days of November 29, 2019, the date of the original direct request notice of proceeding, she did not know. When I asked why it did not match up with the original proof of service submitted by the landlord and the interim decision, she did not know.

During the hearing, the landlord's agent was looking up information. She provided service information regarding the notice to end tenancy, rather than the original direct request proceeding documents. I repeatedly told her what the documents were, but she was unable to find the correct information.

I find that the tenants were not served with original application, monetary order worksheet and evidence, as required by section 89 of the *Act*. The interim decision states that the original application was served on December 1, 2019, by posting to the tenants' rental unit door, not on December 5, 2019, by personal service. The landlord's proof of service indicates that the original application was posted to the tenants' rental unit door. Further, the interim decision was issued on December 3, 2019, after the landlord's application was received by the RTB, so the original application could not have been served after on December 5, 2019.

I notified the landlord's agent that the landlord's application was dismissed with leave to reapply. I informed her that the landlord would be required to file a new application, pay a new filing fee, and provide proof of service at the next hearing, if she chooses to pursue this matter further. I notified her that she could hire a lawyer to obtain legal advice or have an agent appear to assist the landlord, for the next hearing.

Conclusion

The landlord's entire 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: January 27, 2020