



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1216299 B.C. LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL, FFL

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;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:10 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present affirmed 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 Hearing. I also confirmed from the teleconference system that the landlord's agent and I were the only ones who had called into this teleconference.

Preliminary Issue- Service

The landlord's agent testified that the tenant was served with the landlord's application for dispute resolution, at the subject rental property, via registered mail on January 31, 2020. The landlord entered a Canada Post receipt to evidence the above mailing.

The landlord's agent testified that the tenant notified the landlord on December 29, 2019 via email that she no longer resided at the subject rental property. The landlord's agent testified that the landlord did not know the tenant's new address and so served her at the subject rental property.

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 landlord did not serve the tenant in a manner required by section 89(1)(c) of the *Act* because the tenant did not reside at the subject rental property when the dispute resolution application was mailed to the subject rental property. At the hearing, I advised the landlord's agent that I was dismissing his application with leave to reapply.

I notified the landlord's agent that if he wished to pursue this matter further, he would have to file a new application. I cautioned him to be prepared to prove service at the next hearing, as per section 89 of the *Act*. I notified the landlord that he could consult a lawyer for legal advice or an information officer at the Residential Tenancy Branch for information regarding the *Act* or the hearing process. I informed the landlord that he could apply for a substituted service order pursuant to section 71 of the *Act*, if he had sufficient evidence to do so.

Conclusion

I dismiss the landlord's application to recover the \$100.00 filing fee without leave to reapply.

The remainder of 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: March 31, 2020

Residential Tenancy Branch