



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FFL, MNRL, OPC, OPR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on January 28, 2020 (the "Application"). The Landlord sought the following:

- An Order of Possession based on a Two Month Notice to End Tenancy for Landlord's Use of Property dated December 31, 2019;
- An Order of Possession based on a One Month Notice to End Tenancy for Cause dated September 30, 2019;
- An Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 06, 2019;
- To recover unpaid rent; and
- Reimbursement for the filing fee.

The Landlord attended the hearing. Nobody attended the hearing for the Tenant.

The Landlord provided the correct spelling of his last name which is reflected in the style of cause.

The Landlord advised that the Tenant vacated the rental unit January 31, 2020 and therefore he is no longer seeking an Order of Possession. The Landlord withdrew the requests relating to an Order of Possession.

I explained the hearing process to the Landlord who did not have questions when asked. The Landlord provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenant did not. I addressed service of the hearing package and Landlord's evidence.

The Landlord testified that the hearing package and evidence were posted to the door of the rental unit. The Landlord could not recall the date he did this; however, testified that he posted the package the same day the hearing package was made available by the RTB. RTB notes show this was January 28, 2020. The Landlord agreed with this date. The Landlord confirmed the Tenant was still living in the rental unit when the package was posted to the door.

Section 89 of the *Residential Tenancy Act* (the “Act”) sets out the permitted forms of service for the hearing package and states:

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 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].

I heard the Landlord on the issue of unpaid rent; however, upon further consideration, I am not satisfied the hearing package was served in accordance with section 89(1) of the *Act* which is required for a monetary claim. The Landlord posted the hearing package and evidence on the door of the rental unit which is permitted for hearing packages where the issue is an Order of Possession under sections 55, 56 or 56.1 and permitted for evidence. However, this form of service is not permitted where there is a monetary aspect to the claim.

In the circumstances, I am not satisfied the hearing package was served in accordance with the *Act*. There is no evidence before me that the Tenant in fact received the package such as correspondence from the Tenant acknowledging receipt. The Tenant did not submit evidence for the hearing, which would have satisfied me the Tenant received the package. The Tenant did not appear at the hearing.

In the circumstances, I am not satisfied of service and therefore dismiss the application with leave to re-apply. **The Landlord can re-apply to recover unpaid rent**; however, the new hearing package will need to be served in accordance with the *Act*. This decision does not extend any time limits set out in the *Act*.

Given the Landlord was not successful in the Application, I decline to award the Landlord reimbursement for the filing fee.

Conclusion

The requests relating to an Order of Possession are withdrawn.

The request to recover unpaid rent is dismissed **with** leave to re-apply meaning **the Landlord can re-apply for this**. This decision does not extend any time limits under the *Act*.

The request for reimbursement for the filing fee is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: March 31, 2020

Residential Tenancy Branch