



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Metcap Living Management Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an order of possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*;
- a monetary order for unpaid rent, pursuant to section 67 of the *Act*, with a security deposit applied; and
- authorization to recover the filing fee for this application pursuant to section 72.

I left the teleconference connection open until 1:45 P.M. to enable the tenants to call into this teleconference hearing scheduled for 1:30 P.M. The tenants did not attend the hearing. The landlord representative (MF) 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 and I were the only ones who had called into this teleconference

The landlord (applicant) testified she served both tenants (respondents) the notice of hearing and evidence in a single package sent by registered mail on March 11, 2020. The tracking number is on the cover page of this decision.

Section 89 of the *Act* states:

(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].

Residential Tenancy Branch Policy Guideline 12 states:

All parties named on an application for dispute resolution must be served notice of proceedings, including any supporting documents submitted with the application.

Where more than one party is named on an application for dispute resolution, each party must be served separately. Failure to serve documents in a way recognized by the Legislation may result in the application being adjourned, dismissed with leave to reapply, or dismissed without leave to reapply.
[emphasis added]

Rule of Procedure 3.5 states that at the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

Each tenant listed on the tenancy agreement should be individually served because procedural fairness requires each tenant to be afforded the opportunity to review the landlord's application and evidence and prepare an individual response to the landlord's application and evidence.

Based on the landlord's testimony, I find the tenants were not served in accordance with the Act, as both of them were served together, in a single package.

As such, I dismiss the landlord's application for an order of possession and a monetary order with leave to reapply.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the landlord's application for an order of possession and a monetary order with leave to reapply.

I dismiss the landlord's application to recover the filing fee without 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: May 05, 2020

Residential Tenancy Branch