



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL OPR-DR OPRM-DR

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

- an order of possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent and utilities in the amount of \$2,300 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

This matter was reconvened from an *ex parte*, direct request hearing, following which an interim decision adjourning the matter to a participatory hearing was made on April 17, 2020 (the "**Interim Decision**"). The presiding adjudicator ordered that the landlord serve the tenant with "the Notice of Reconvened Hearing, the Interim Decision, and all other required documents, upon the tenant within three (3) days of receiving [the Interim Decision]."

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:15 am in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 am. The landlord 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 testified that she served the tenant with a copy of the Interim Decision, the notice of reconvened hearing, and her supporting evidence via email on April 17, 2020. She submitted copies of the email attaching these documents to the tenant. The tenant did not respond or reply to this email.

The landlord testified that the tenant never replies to emails she sends him, and that, as such, she communicated with the tenant via text message during the course of the tenancy.

Ordinarily, service by email is not permitted under the Act. However, on March 30, 2020, the Executive Director issued an order (the "**Director's Order**") permitting service of

documents by email during the state of emergency declared March 18, 2020 so long as one of the following applies:

- 1) the document is emailed to the email address of the person to whom the document is to be given or served, and that person confirms receipt of the document by way of return email in which case the document is deemed to have been received on the date the person confirms receipt;
- 2) the document is emailed to the email address of the person to whom the document is to be given or served, and that person responds to the email without identifying an issue with the transmission or viewing of the document, or with their understanding of the document, in which case the document is deemed to have been received on the date the person responds; or
- 3) the document is emailed to the email address that the person to whom the document is to be given or served has routinely used to correspond about tenancy matters from an email address that the person giving or serving the document has routinely used for such correspondence, in which case the document is deemed to have been received three days after it was emailed

Based on the testimony of the landlord, I find that the landlord's service by email does not meet any of these requirements. The tenant did not respond to the email, and the email address the documents were sent to is not routinely used for correspondence related to the tenancy. As such, I find that the landlord has failed to serve the tenant with the documents as ordered by the Interim Decision.

Accordingly, I dismiss the landlord's application, with leave to reapply.

I must also note that during the hearing, the landlord stated that the tenant no longer resides at the rental unit as of May 1 or 2, 2020. She stated that she changed the locks at the start May 2020 due to the tenant's non-payment of rent. I note that while such *de facto* evictions are a breach of the Act, I have no application before me that seeks any relief in connection with these actions of the landlord. As such, I make no order relating to this matter.

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: June 2, 2020

Residential Tenancy Branch