



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, OPM, OPN, MNDL-S, MNDCL-S, 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 or possession under a tenant's notice to end tenancy, a mutual agreement to end a tenancy and for a breach of vacate clause, pursuant to sections 44 and 55 of the Act;
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67 of the Act;
- a monetary order for compensation for unpaid rent, pursuant to section 67 of the Act;
- an authorization to retain all or a portion of the tenant's security deposit in satisfaction of the monetary order requested, pursuant to section 72 of the Act;
- an authorization to recover the filing fee for this application, pursuant to section 72 of the Act.

I left the teleconference connection open until 9:47 A.M. to enable the tenants to call into this teleconference hearing scheduled for 9:30 A.M. The tenants did not attend the hearing. The landlord, represented by advocate JC (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 (applicant) testified she served both respondents the notice of hearing in a single package in person on August 21, 2020 at 1:00 P.M. Respondent SW received the notice of hearing. Respondent JT did not receive a copy of the notice of hearing.

Section 89 (2) of the Act states:

(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]

Based on the landlord's testimony, I find the respondents were not served in accordance with the Act, as only SW was served the notice of hearing.

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: October 05, 2020