



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Winthrop Rentals
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OPRM-DR, OPR-DR-PP, FFL, MNDL-S**

Introduction

On September 22, 2020, an Adjudicator appointed pursuant to the *Residential Tenancy Act* (the *Act*) adjourned the landlord's application for dispute resolution for the following items to a participatory hearing. She did so on the basis of an *ex parte* hearing using the Residential Tenancy Branch's direct request process. The adjudicator adjourned the direct request for the following reasons:

there is no signature of a witness, or a signature of the person who received the 10 Day Notice, to confirm service of the 10 Day Notice to the tenants.

I have been delegated authority under the *Act* to consider the landlord's application for:

- An order of possession and a monetary order for unpaid rent, by direct request pursuant to sections 46 and 55;
- An order of possession by direct request (with repayment plan) pursuant to sections 46 and 55;
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72; and
- A monetary Order for Damages and authorization to retain a security deposit pursuant to sections 38 and 67.

The landlord was represented at the hearing by JW ("landlord"). Neither of the tenants attended the hearing although I left the teleconference line open throughout the hearing which lasted approximately 15 minutes.

The landlord testified the tenants vacated the rental unit on September 28, 2020. As such, he no longer requires an order of possession.

The landlord testified he sent each tenant a copy of the Notice of Dispute Resolution Proceedings by registered mail on October 1, 2020 to the rental unit the tenants vacated on September 28th. The tracking numbers for the mailings are recorded on the cover page of this decision. The landlord testified that both packages were returned to him unserved.

Preliminary Issue – Service of Notice of Dispute Resolution Proceedings

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]...
(emphasis added)*

Rule 3.5 of the Residential Tenancy Branch Rules of Procedure provide 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.

In this case, the landlord testified that on October 1, 2020, he sent the Notice of Dispute Resolution Proceedings to the address that the tenants vacated 3 days earlier on September 28th. As such, the landlord has not served the Notice of Dispute Resolution Proceedings in accordance with section 89(1)(c).

The purpose of serving documents under the Legislation is to notify the parties being served of matters relating to the Legislation, the tenancy agreement, a dispute resolution proceeding or a review. Another purpose of providing the documents is to allow the other party to prepare for the hearing and gather documents they may need to

serve and submit as evidence in support of their position. I find that procedural fairness requires that I be satisfied the tenants have been served with the application for dispute resolution. Given the absence of any documentary evidence from the tenants and their failure to attend the hearing, I am not satisfied the landlord has served the tenants with the Notice of Dispute Resolution Proceedings.

I dismiss the landlord's application for a monetary order with leave to reapply. I make no finding regarding the merits of the landlord's claim.

I dismiss the landlord's application for an order of possession as the tenancy ended pursuant to section 44(1)(d) when the tenants vacated the rental unit.

Conclusion

The landlord's application for a monetary order is dismissed with leave to reapply.

The landlord's application for an order of possession is dismissed 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: November 23, 2020

Residential Tenancy Branch