



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding John Howard Society of the Thompson
Region and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlord: OPRM-DR, FFL
Tenant: CNR, RP, FFT

Introduction

This hearing dealt with the crossed Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought to cancel a notice to end tenancy and an order for repairs to the rental unit.

The hearing was conducted via teleconference and was attended by the tenant and two agents for the landlord.

The landlord testified the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by posting them on the door of the rental unit on October 2, 2020. However, the landlord testified that they confirmed on August 31, 2020 that the tenant was not residing in the rental unit.

Section 89(1) of the *Act* stipulates:

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*].

Section 89(2) states:

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*].

Section 89(2)(d) specifically allows for a landlord seeking an order of possession to post the proceeding documents on the door of the rental unit. However, since the monetary order is not an order of possession Section 89(1) applies the allowed methods of service for the monetary claim. Under Section 89(1) there is no provision for a party to post the notice on the door.

In the case before me, since the landlord posted their Application for Dispute Resolution to the rental unit door on a date that was after the date they were confirmed that the tenant had vacated the rental unit I find the landlord has failed to establish that they served the tenant with their application and evidence in accordance with Section 89 of the *Act*.

In addition, both parties confirmed the tenant contacted the landlord to ask for the documents to be served by email after the tenant was informed by a friend that something was posted to the rental unit door. The parties also confirmed that the landlord did not agree to send by the documents by email.

While email is not an accepted method of service, I find the result is that the tenant has not been sufficiently notified of the landlord's application and did not have the evidence the landlord intended to rely upon to proceed with their claim.

As a result, I dismiss the landlord's Application for Dispute Resolution with leave to reapply.

The tenant testified, that she did not serve the landlord with her Application for Dispute Resolution or any of her evidence. The landlord confirmed they had not received the tenant's Application or any evidence for this hearing today from the tenant. Therefore, I find the tenant has not served the landlord with notice of her application as required

under Section 89 of the Act. I dismiss the tenant's Application with leave to reapply. However, I also note that this leave to reapply does not extend any deadlines associated with the issues in the tenant's Application.

Conclusion

As noted above, both Applications for Dispute Resolution are dismissed with 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 06, 2020

Residential Tenancy Branch