



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPR, MNRL, FFL
Tenant: CNR

Introduction

This was a cross application hearing that dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the 10 Day Notice to End Tenancy, pursuant to section 46.

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

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:54 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord and his assistant attended the hearing and were 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, his assistant and I were the only ones who had called into this teleconference.

As the tenancy has already ended, I dismiss the tenant's application for dispute resolution without leave to reapply.

Preliminary Issue- Service

At the beginning of the hearing the landlord testified that the tenant moved out of the subject rental property on November 21, 2020. The assistant testified that the tenant was served with the landlord's application for dispute resolution via registered mail on November 20, 2020. A receipt for same was entered into evidence. The Canada Post website states that the package was delivered to a community mailbox, parcel locker or apt./condo mailbox on November 23, 2020.

The assistant testified that the Canada Post pick up slip was still in the mailbox when the landlord regained possession of the subject rental property.

Section 89(1) of the *Act* states that 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*].

I find that the tenant did not reside at the subject rental property on November 23, 2020, when the landlord's application for dispute resolution was delivered; consequently, the tenant was not served with the landlord's application for dispute resolution. I therefore dismiss the landlord's application for dispute resolution, with leave to reapply.

I notified the landlord that if he wished to pursue this matter further, he would have to file a new application. I cautioned the landlord to be prepared to prove service at the next hearing, as per section 89 of the *Act*. I informed the landlord that he could hire a skip tracer to locate the tenant. I informed the landlord that he could apply for a substituted service order pursuant to section 71 of the *Act*, if he had sufficient evidence to do so.

Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord's application is 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: January 05, 2021

Residential Tenancy Branch