



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU, OPN, MNRL-S, MNDCL-S, FFL

Introduction

This hearing convened as a result of a Landlords' Application for Dispute Resolution, filed on October 16, 2020, wherein the Landlords sought the following relief:

- an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent issued on October 7, 2020 (the "10 Day Notice");
- an Order of Possession based on a Tenants' Notice to End Tenancy dated October 1, 2020 (the "Tenants' Notice");
- monetary compensation from the Tenants;
- authority to retain the Tenants' security deposit; and,
- recover of the filing fee.

The hearing of the Landlords' Application was scheduled for teleconference at 11:00 a.m. on January 11, 2021. Only the Landlords called into the hearing. The Landlord, R.H. gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

As the Tenants failed to call into the hearing, I considered service of the Landlords' Application materials. R.H. testified that the Tenants gave notice to end their tenancy effective October 31, 2020 but appeared to have moved out some time prior to this. The Landlords were not sure exactly when the Tenants vacated the rental unit as the Tenants left several belongings in the unit.

Section 89 of the *Residential Tenancy Act* sets out service requirements for a request for monetary compensation and provides as follows:

89 (1) 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*].

[emphasis added in bold]

R.H. further testified that they initially served the Tenants by registered mail, however the packages were delivered to a postal mailbox, not the Tenants' *residence*. As this did not meet the requirements of section 89, the Landlords then resent the packages on October 27, 2020 with specific instructions that the packages be delivered to the rental unit.

Section 90 of the *Act* provides that documents served by registered mail are deemed served five days later; as such, the package sent to the rental unit is deemed served as of November 1, 2020. The Tenant's Notice provided that the Tenants would vacate the rental unit by October 31, 2020 such that at the time the registered mail packages were deemed served the Tenants were no longer residing in the rental unit. According, I find the Tenants were not served in accordance with the *Act*.

One of the Principles of Natural Justice is that a party to a dispute has the right to know the claim against them and an opportunity to attend the hearing and make submissions in defense of the claims made. The *Act* contains specific rules about service in section 89 to ensure that this principle is observed; to proceed without adequate notice to the Tenants would offend this principle and would deny the Tenants a fair opportunity to be heard.

In the normal course I might consider adjourning this matter pursuant to *Rules 7.8* and *7.9* of the *Rules of Procedure* to permit the Landlords an opportunity to serve the Tenants. However, the Landlords advised that they made an earlier application for monetary compensation which is set to be heard on January 22, 2021. The amounts

claimed by the Landlords in that prior application is identical to the claim before me. They further advised that they served the Tenants early enough with this other application that their matter will likely proceed. I therefore dismiss the monetary claims before me with leave to reapply.

Conclusion

The Tenants vacated the rental unit such that the Landlords' request for an Order of Possession was no longer required. These claims are dismissed without leave to reapply.

The Landlords failed to serve the Tenants with notice of the hearing in accordance with section 89 of the *Act*. As such, their request for monetary compensation and authority to retain the Tenants' security deposit is dismissed with leave to reapply.

As the Landlords were unsuccessful in their claim, they are not entitled to recover the filing fee. This portion of their claim 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: January 11, 2021

Residential Tenancy Branch