



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR-PP, FFL

Introduction

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

- an order of possession for unpaid rent, pursuant to section 55; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 21 minutes. 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.

Preliminary Issue – Direct Request Proceeding and Service

This hearing was originally scheduled as a direct request proceeding, which is a non-participatory hearing. The direct request proceeding is based on the landlord's paper application only, not any submissions from the tenant. An "interim decision," dated November 18, 2020, was issued by an Adjudicator for the direct request proceeding. The interim decision adjourned the direct request proceeding to this participatory hearing.

The landlord was required to serve the tenant with a copy of the interim decision, the notice of reconvened hearing and all other required documents, within three days of receiving it, as outlined in the interim decision itself.

The landlord said that he served the above documents to the tenant on November 20, 2020, by way of registered mail to a service address provided by the tenant, which is different from the rental unit address. The landlord provided a Canada Post tracking number verbally during the hearing. The landlord provided photographs of the

documents sent and the envelope with the Canada Post tracking number and the address where the mail was sent. The Canada Post website for the tracking number provided by the landlord, indicates that the mail was returned to sender.

The landlord claimed that he sent the mail to PO Box address because the tenant gave him that address in summer 2020, by way of email and text message. The landlord did not provide a copy of the emails or text messages with his application, although he claimed that he had them in front of him during the hearing. He said that he does not know whether the tenant is still living at the rental unit.

Section 89(1) of the *Act* outlines the methods of service for an application for dispute resolution, which reads in part as follows (my emphasis added):

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 documents].*

Residential Tenancy Policy Guideline 12 states the following, in part (my emphasis added):

*Registered mail includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a **named person** is available.*

*Proof of service by Registered Mail should include the original Canada Post Registered Mail receipt containing the date of service, the address of service, and that **the address of service was the person's residence at the time of service**, or the landlord's place of conducting business as a landlord at the time of service as well as a copy of the printed tracking report.*

Accordingly, I find that the tenant was not served with the interim decision, notice of reconvened hearing and all other required documents, as per section 89 of the *Act*.

I find that the landlord was unable to provide sufficient documentary proof of a forwarding address given by the tenant or when the landlord obtained this address. The landlord did not provide a copy of the emails or text messages with the forwarding address. The landlord had ample time from filing this application on October 21, 2020, to the hearing date of February 4, 2021, to provide these documents. The tenant did not attend this hearing to confirm service. The mail was returned to the landlord sender.

I notified the landlord that his application was dismissed with leave to reapply, except for the filing fee. I notified him that he could file a new application, pay another filing fee and provide proof of service at the next hearing, if the landlord chooses to pursue this matter further. The landlord confirmed his understanding of same.

The landlord is cautioned to provide documentary proof of the tenant's valid and current forwarding or residential address if a future application is served by registered mail to the tenant.

When I notified the landlord about my decision, he became upset, yelled at me and argued with me. I informed the landlord that his behaviour was inappropriate. The landlord is cautioned that if he engages in inappropriate behaviour against an Arbitrator at a future Residential Tenancy Branch ("RTB") hearing, he could be excluded from that hearing and a decision can be made in his absence, as per Rule 6.10 of the *RTB Rules of Procedure*.

Conclusion

The landlord's application to recover the \$100.00 filing fee is dismissed without leave to reapply. The landlord's application for an order of possession 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: February 04, 2021

Residential Tenancy Branch