



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU-DR, OPUM-DR, 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 and utilities, pursuant to section 55;
- a monetary order for unpaid rent and utilities, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 28 minutes. The landlord and his translator attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that his translator had permission to assist him at this hearing.

At the outset of the hearing, the landlord stated that the tenant vacated the rental unit on December 7, 2020. He then claimed that it was December 8, 2020. He claimed that he already obtained an order of possession at a previous RTB hearing and he did not require another order. The landlord's application for an order of possession is dismissed without leave to reapply.

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 December 3, 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 December 6, 2020, by way of registered mail to the rental unit. The landlord provided a Canada Post receipt and confirmed the tracking number verbally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant would have been deemed served with the above documents on December 11, 2020, five days after its registered mailing.

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 tenant could not have received the above documents at the rental unit on December 11, 2020 because he had already vacated the rental unit on December 8, 2020.

I notified the landlord that his monetary application for the unpaid rent and utilities was dismissed with leave to reapply, except for the filing fee. During the hearing, the landlord continued to argue that he wanted me to make a decision regarding the unpaid rent, after I notified him that I could not proceed because he was unable to prove service. The landlord may 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.

Conclusion

The landlord's application for an order of possession and to recover the \$100.00 filing fee is dismissed without leave to reapply. The landlord's application for a monetary order for unpaid rent and utilities 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 19, 2021

Residential Tenancy Branch