



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, OPR-DR, FFL; OPR-DR, OPRM-DR

Introduction

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

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

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

- an order of possession for unpaid rent, pursuant to section 55; and
- a monetary order for unpaid rent, pursuant to section 67.

The two tenants did not attend this hearing, which lasted approximately 32 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 Proceedings and Service

This hearing was originally scheduled as direct request proceedings, which are non-participatory hearings. The direct request proceedings are based on the landlord's paper applications only, not any submissions from the tenant. The landlord filed two direct request applications, and both were adjourned to this participatory hearing.

The "first interim decision," dated November 27, 2020 and the "second interim decision," dated January 7, 2021, were issued by an Adjudicator for the direct request proceeding. Both interim decisions adjourned the direct request proceedings to this participatory hearing.

The landlord was required to serve the tenants with copies of the two interim decisions, the notices of reconvened hearing and all other required documents, within three days of receiving them, as outlined in the interim decisions themselves. The landlord claimed that she did not know when she received both interim decisions.

The landlord did not provide any service information regarding the first interim decision, dated November 27, 2020.

The landlord said that she served the second interim decision and notice of reconvened hearing to the tenants on January 14, 2021, both by way of registered mail. The landlord provided two Canada Post receipts and confirmed both tracking numbers verbally during the hearing. She stated that both packages were returned to sender as unclaimed. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the second interim decision and notice of reconvened hearing on January 19, 2021, five days after their registered mailings.

The landlord spent approximately 20 minutes of hearing time looking up the above information regarding service. She claimed that she was searching for this information on her phone during the hearing. She said that this was her first time and she did not know she would be asked questions about service during this hearing.

When I asked the landlord how she served a copy of the original applications for direct request to the two tenants, she did not know. She again began searching for this information on her phone during the hearing. She spent approximately 12 additional minutes searching and could not locate this information.

Accordingly, I find that the tenants were not served with the original applications for direct request, as per section 89 of the *Act*. The landlord had 32 total minutes during this hearing to locate this service information and was unable to do so. The landlord had ample time from filing her first application on November 2, 2020 and her second application on December 9, 2020, to the hearing date of February 16, 2021, to provide this information. The tenants did not attend this hearing to confirm service.

I notified the landlord that her monetary applications for unpaid rent were dismissed with leave to reapply.

I informed the landlord that her applications for an order of possession for unpaid rent and to recover the filing fee of \$100.00, were dismissed without leave to reapply. During the hearing, the landlord confirmed that her Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated October 21, 2020 ("10 Day Notice") included an unpaid rent amount of \$3,600.00 due on October 1, 2020. She said that this included October 2020 rent of \$2,400.00 and an unpaid security deposit of \$1,200.00. I notified her that the amount of unpaid rent was incorrect because it included a security deposit amount that is not rent. Therefore, the tenants did not have proper notice of the correct amount of rent due, in order to pay it and cancel the notice. I informed the landlord that her 10 Day Notice, date October 21, 2020, was cancelled and that her applications for an order of possession based on this notice were dismissed without leave to reapply.

I notified the landlord that she could file a new application, pay a new filing fee and provide proof of service at the next hearing, if the landlord chooses to pursue this matter further. I informed the landlord that she could have an agent or advocate assist her prior to and at the next hearing, if she wished to do so. The landlord confirmed her understanding of same.

Conclusion

The landlord's applications for an order of possession and to recover the \$100.00 filing fee is dismissed without leave to reapply.

The landlord's 10 Day Notice, dated October 21, 2020, is cancelled and of no force or effect.

The landlord's applications for a monetary order for unpaid rent 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 16, 2021

Residential Tenancy Branch