



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT
OPR-DR, OPRM-DR, FFL

Introduction

This was a cross application hearing that dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the One Month Notice to End Tenancy, pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

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; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The landlord and his counsel were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The landlord testified that they are not recording this dispute resolution hearing.

Counsel for the landlord provided an email address for service of this decision.

The tenants did not attend this hearing, although I left the teleconference hearing connection open for 14 minutes in order to enable the tenants to call into this teleconference hearing scheduled for 9:30 a.m. The landlord, the landlord's counsel and a junior associate on the line for training purposes, 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, the landlord's counsel and the junior associate and I were the only ones who had called into this teleconference.

Rule 7.1 of the Residential Tenancy Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Based on the above, in the absence of any evidence or submissions from the tenants, I order the tenants' application dismissed without liberty to reapply.

Counsel for the landlord submitted that the tenants moved out of the subject rental property on June 2, 2021; therefore, there is no need to consider if the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act* as this tenancy has ended.

Counsel for the landlord submitted that the tenants were served with the landlord's application for dispute resolution via email on March 12, 2021. The serving email was not entered into evidence. Counsel submitted that the landlord did not have written authorization to serve the tenants via email but that they regularly used email to communicate. Counsel submitted that the tenant was also served via regular mail.

Section 89 of the *Act* sets out the approved methods of service for applications for dispute resolution 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*];

(f) by any other means of service provided for in the regulations.

Section 43(2) of the Regulation to the Residential Tenancy Act states:

For the purposes of section 89 (1) (f) [*special rules for certain documents*] of the Act, the documents described in section 89 (1) of the Act may be given to a person by emailing a copy to an email address provided as an address for service by the person.

Residential Tenancy Guideline #12 states:

To serve documents by email, the party being served must have provided an email address specifically for the purposes of being served documents. If there is any doubt about whether an email address has been given for the purposes of giving or serving documents, an alternate form of service should be used, or an order for substituted service obtained.

I find that the tenants did not provide the landlord with authorization to serve them via email. Therefore, the landlord was not permitted to serve the tenants with this application for dispute resolution via email. Regular use of email to communicate between the parties may be a ground for a substituted service order, which the landlord may apply for in a future application. I find that service by regular mail is not an approved method of service under section 89 of the *Act*. The landlord's application is dismissed, with leave to reapply, for failure to prove service in accordance with section 89 of the *Act*.

I notified the landlord that if he wished to pursue this matter further, he would have to file a new application. I cautioned him to be prepared to prove service at the next hearing, as per section 89 of the *Act*. 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. I informed the landlord that if he did not have the tenants' forwarding address he could hire a skip tracer to locate the tenants.

Conclusion

I dismiss the landlord's application to recover the \$100.00 filing fee without leave to reapply.

The remainder of 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: June 03, 2021

Residential Tenancy Branch