



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPN, MNRL, 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 based on the tenants' notice to end tenancy, pursuant to section 55;
- a monetary order for unpaid rent of \$1,172.50, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two tenants did not attend this hearing, which lasted approximately 20 minutes from 9:30 a.m. to 9:50 a.m. The landlord and her agent 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 she owned the rental unit. She said that her agent, who is her husband, had permission to speak on her behalf at this hearing.

At the outset of this hearing, I informed the landlord and her agent that Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("Rules") does not permit recording of this hearing by any party. Both the landlord and her agent affirmed, under oath, that would not record this hearing.

I explained the hearing process to the landlord and her agent. Both had an opportunity to ask questions. Both did not make any adjournment or accommodation requests.

The landlord stated that the tenants vacated the rental unit on July 16, 2021. She said that she did not require an order of possession against the tenants. I informed her that these portions of her application were dismissed without leave to reapply.

The landlord confirmed that she amended her application to add a claim for a monetary order for unpaid rent on July 8, 2021. The landlord's agent stated that he served the amendment to the tenants on July 4 or 5, 2021. The landlord said that it was done on July 11, 2021. The landlord's agent then claimed that he served the amendment to the tenants on July 11, 2021, by way of posting it to the tenants' rental unit door. He said that he could not serve it to the tenants in person because they would not accept it from him, so he posted it to their door instead.

Rule 4.6 of the RTB *Rules* states the following (my emphasis added):

4.6 Serving an Amendment to an Application for Dispute Resolution

*As soon as possible, **copies of the Amendment to an Application for Dispute Resolution form and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by section 89 of the Residential Tenancy Act** or section 82 of the Manufactured Home Park Tenancy Act and these Rules of Procedure.*

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution form and supporting evidence as required by the Act and these Rules of Procedure.

In any event, a copy of the amended application and supporting evidence should be served on the respondents as soon as possible and must be received by the respondent(s) not less than 14 days before the hearing.

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

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].*

Accordingly, I find that the landlord did not serve the tenants with the landlord's amendment, as required by section 89(1) of the *Act* and *RTB Rule* 4.6. Posting the landlord's amendment to the tenants' rental unit door is not permitted by section 89(1) of the *Act* for a monetary claim. The tenants did not attend this hearing to confirm service.

For the above reasons, I notified the landlord and her agent, that the landlord's application was dismissed with leave to reapply, except for the \$100.00 filing fee and the order of possession. I informed them that the landlord could file a new application and pay a new filing fee, if the landlord wants to pursue this matter in the future. They confirmed their understanding of same.

The landlord and her agent were upset with my decision, argued that they wanted a monetary order, and stated that the tenants could not just move out and not pay the rent. I repeatedly explained the reasons for my decision and informed them that I could not provide legal advice to them. They confirmed their understanding of same.

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 of \$1,172.50 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: August 19, 2021