



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPL, FFL**

Introduction

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

An Order of Possession for Landlord's Use of Property pursuant to sections 49 and 55;
and

Authorization to recover the filing fee for this application from the opposing party pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:45 a.m. to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. 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 and I were the only ones who had called into this teleconference.

The landlord attended the hearing and testified that he did not serve the tenant with the Notice of Dispute Resolution Proceedings package.

Preliminary Issue

Section 89 of the *Act* establishes the following Special Rules for certain documents, which include an application for dispute resolution:

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 document]...*

The Residential Tenancy Branch Policy Guideline PG-12 provides guidance regarding service of document provisions in the *Act*. Part 15 of PG-12 speaks specifically to proof of service.

15. PROOF OF SERVICE

Where the respondent does not appear at a dispute resolution hearing, the applicant must be prepared to prove service of the notice of hearing package. Proof of service of other documents may be submitted in support of claims for dispute resolution in accordance with the Rules of Procedure.

...

Failure to prove service may result in the matter being dismissed, with or without leave to reapply. Adjournments to prove service are given only in unusual circumstances.

Based on the landlord's acknowledgement that he did not serve the tenant with the Notice of Dispute Resolution Proceedings Package (which includes the Application for Dispute Resolution), I cannot proceed to adjudicate the landlord's application. Consequently, I dismiss this application with leave to reapply.

Conclusion

I dismiss the landlord's application with leave to reapply. Leave to reapply does not extend any deadlines established pursuant to the *Act*, including the deadlines for applying for dispute resolution or for returning security deposits at the end of a tenancy.

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: November 15, 2021