



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNR

OPR-DR, MNR-DR, FFL, MNDL, MNRL

Introduction

This hearing dealt with applications filed by both the tenant and the landlord pursuant to the Residential Tenancy Act (the “Act”).

The tenant applied for:

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities pursuant to sections 46 and 55.

The landlord applied for:

- An Order of Possession for unpaid Rent by direct request, pursuant to sections 46 and 55;
- A monetary order for unpaid rent by direct request, pursuant to section 67;
- Authorization to recover the filing fee for this application from the opposing party pursuant to section 72;
- An order for compensation for damage caused by the tenant pursuant to section 67; and
- A monetary order for rent pursuant to section 67.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:30 a.m. to enable the tenant to call into this teleconference hearing scheduled for 11:00 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 sent the tenant a copy of the Notice of Dispute Resolution Proceedings package by UPS Courier. The landlord testified it was delivered on July 30, 2021. The landlord testified that he also sent the

Notice of Dispute Resolution Proceedings package to the tenant via email on July 29th. The landlord testified that his evidence was not served in the email, however he posted it to the tenant's door sometime later.

The landlord further testified that an arbitrator granted him an Order of Possession following a hearing on September 28, 2021. The file number for that dispute is recorded on the cover page of this decision. The landlord testified that the tenant vacated the rental unit on October 13th and did not provide a forwarding address upon move-out.

Analysis

I accept the landlord's testimony that the tenancy ended when the tenant moved out on October 13th. Section 62(4) allows the director to dismiss an application if there are no reasonable grounds for the application or if the application does not disclose a dispute that may be determined under Part 5 of the *Residential Tenancy Act*. As this tenancy has already ended, I find the tenant's application no longer discloses a dispute that may be determined under Part 5 of the *Act*. I dismiss the tenant's application pursuant to section 62(4). For the same reasons, I dismiss the landlord's application seeking an order of possession.

The landlord seeks monetary orders for unpaid rent and damages to the rental unit. 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]...
- f. by any other means of service provided for in the regulations.

Section 43(2) of the *Residential Tenancy Regulations* 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.

Rule 3.5 of the Residential Tenancy Branch Rules of Procedure provide that at the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the *Act* and these Rules of Procedure. I find that when the landlord sent the tenant the Notice of Dispute Resolution Proceedings (which includes the Application for Dispute Resolution) by UPS courier, he did not serve the tenant in accordance with any of the methods required under section 89(1). Further, I do not find the tenant provided an email address as an address for service as required by section 43(4) of the *Regulations*. For these reasons, I am not satisfied the landlord served the tenant with the Notice of Dispute Resolution Proceedings Package and all evidence as required by the *Act*. The landlord's application seeking monetary orders for unpaid rent and damages is therefore dismissed with leave to reapply.

Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord's application seeking an order of possession and to recover the filing fee is dismissed without leave to reapply.

The landlord's application seeking monetary compensation 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: November 09, 2021

Residential Tenancy Branch