



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL, MNRL-S, OPB**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order of possession under breach of a tenancy agreement pursuant to 55(2)(c);
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord attended and was given the opportunity to make submissions as well as present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time of the hearing for an additional 12 minutes to allow the landlord the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant had been provided.

Service upon Tenant

The landlord submitted no documents in support of service or any aspect of the claim. The landlord did not submit a copy of the tenancy agreement although they were requested an Order of Possession as the tenant had breached the agreement. The landlord did not submit a monetary order worksheet or any explanation for the claim for outstanding rent.

The landlord testified the landlord served the tenant by posting to the tenant's door on July 28, 2020 more than three days after receiving the Notice of Hearing and Application for Dispute Resolution on July 16, 2021 contrary to the provisions of the Act.

Within three days of the date the Proceeding Package is made available by the RTB, the applicant must serve each respondent separately. Section 59(3) of the Act states:

(3) Except for an application referred to in subsection (6) [hotel accommodation], a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.

The landlord failed to serve the documents as required.

As well, the landlord's claim for a monetary award cannot be served by posting to the tenant's door. The requirements are set out in section 89 which states:

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*].

[Emphasis added]

I asked the landlord about any other means of service or if the tenant had acknowledged service. They replied negatively.

I find the landlord has not complied with sections 59(3) or 89 and has not met the burden of proof that service took place in compliance with the Act.

I therefore find the landlord has not established service upon the tenant as required by the Ac. I dismiss the request for reimbursement of the filing fee without leave to reapply. I dismiss rest of the landlord's claim with leave to reapply.

Conclusion

The landlord's claim 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 05, 2021

Residential Tenancy Branch