



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **LL: FFL, OPC, MNRL-S, MNDL-S, MNDCL-S, OFL, OL**
TT: FFT, CNR, CNC, MNDCT, RR, MNRT, OLC

Introduction

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

Agent TM on behalf of an unnamed landlord applied for:

- An order of possession pursuant to section 55;
- A monetary award pursuant to section 67; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant, named the landlord JPK, and applied for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) pursuant to section 46;
- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause (the “1 Month Notice”) pursuant to section 47;
- a monetary award pursuant to section 67;
- a reduction of rent pursuant to section 65;
- an order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee from the landlord pursuant to section 72.

The tenant did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information.

TM attended the hearing, stated they were the agent for the landlord JPK and had filed the landlord's application, and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Preliminary Issue- Service of Landlord's Application

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]...*

Section 89(2) deals with special rules for certain documents, which include an application for dispute resolution for an order of possession for the landlord, and states:

An application by a landlord under section 55 [order of possession for the landlord], 56 [application for order ending tenancy early] or 56.1 [order of possession: tenancy frustrated] must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;*
- (b) by sending a copy by registered mail to the address at which the tenant resides;*
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;*
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;*
- (e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].*

Residential Tenancy Policy Guideline 12 further provides that:

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...

TM testified that they served the tenant with the Notice of Hearing and materials by placing in the mailbox of the rental unit on January 27, 2022. I note that the Branch records show that a Notice of Hearing was first generated on February 9, 2022.

I find no conceivable way that TM could have served the tenant with materials on January 27, 2022 when those materials were not yet available and first generated over a week later on February 9, 2022. Based on the evidence I am not satisfied that the tenant has been served with the landlord's materials in a manner consistent with the *Act* or at all.

Based on the evidence I am not satisfied that the tenant was properly served with the application for dispute resolution. Consequently, I dismiss the landlord's present application with leave to reapply.

Issue(s) to be Decided

Is the tenant entitled to any of the relief sought?

Analysis

The tenant did not attend the hearing which was scheduled by conference call at 11:00am. Rule 7.3 of the Rules of Procedure provides 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.

Consequently I dismiss the tenant's entire application without leave to reapply.

While I have dismissed the tenant's application, based on the paucity of evidence submitted I am not satisfied that there are any Notices to End Tenancy that meets the form and content requirements of section 52 of the *Act*. Accordingly, I decline to issue an Order of Possession.

Conclusion

The applications of both the landlord and the tenant are dismissed in their entirety 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: March 18, 2022

Residential Tenancy Branch