



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR-MT, RR, RP, PSF, AS, OPR-DR, MNR-DR, FFL

Introduction

This hearing was convened in response to an application by the Tenants and an application by the Landlords pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenants applied on May 11, 2022 for:

1. An Order cancelling a notice to end tenancy - Section 46;
2. More time to make the application to cancel the notice to end tenancy – Section 66;
3. An Order for a rent reduction - Section 65;
4. An Order for repairs - Section 32;
5. An Order for the provision of services or facilities - Section 65; and
6. An Order allowing an assignment or sublet - Section 65.

The Landlords applied on May 16, 2022 for:

1. An Order of Possession - Section 55;
2. An Order for unpaid rent or utilities - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

Preliminary Matter

The Landlords did not attend the hearing at the commencement of the hearing. The Tenants appeared and were given full opportunity under oath to be heard, to present evidence and to make submissions.

Legal Counsel for the Landlord states that the Landlords are busy elsewhere and cannot attend the hearing. Legal Counsel states that they will make submissions on behalf of the Landlords. Legal Counsel was cautioned that credibility may be an issue. Landlord TH called onto the hearing an approximate half hour into the hearing and was given opportunity under oath to be heard, to present evidence and to make submissions.

Legal Counsel submits that the Landlords' application for dispute resolution, notice of hearing and evidence (the "Hearing Package") was given to the Tenants on June 1, 2022 by posting the Hearing Packages on the door. Legal Counsel submits that this service was witnessed by the upper tenant however no affidavit or proof of service was provided for this hearing. The Tenants state that they did not receive any application from the Landlord and that they only learned about it a few days before the hearing.

Legal Counsel submits that the Tenants were also served with the Hearing Package by registered mail on June 1, 2022. Legal Counsel provides the tracking number for this mail and submits that one of the Hearing Packages was signed for. The Tenant states that they do not receive their mail directly from the postal service to their door and that the upper tenant delivers mail to them. The Tenant states that no registered mail was delivered by the upper tenant to the Tenants and that neither Tenant signed for any mail.

The Tenant states that they served their application, notice of hearing and evidence a few days late to Landlord HS who resides close to the Tenants. The Tenant states that they served these documents by posting them on the door of Landlord HS. Legal Counsel submits that no documents were provided by the Tenants.

Section 89(2) of the Act provides that 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*];
- (f) by any other means of service provided for in the regulations.

Although it was indicated at the hearing that the registered mail of the Landlords' Hearing Package could be accepted, upon further consideration of the Tenant's undisputed evidence that they only receive mail from the upper tenant I find that the Tenants have raised credible doubt about the delivery of the registered mail from the upper tenant to the Tenants. As the Landlord provided no supporting witness evidence from the upper tenant and given the Tenant's evidence of not having received or signed for any mail, I find on a balance of probabilities that the Landlord has not provided sufficient evidence of registered service of their Hearing Package on the Tenants. As the Landlord similarly provided no supporting evidence of the Hearing Package being posted on the Tenants' door and given the Tenant's evidence that no Hearing Package was received by them on the door of the unit, I find on a balance of probabilities that the Landlord has not provided sufficient evidence of this service. I therefore dismiss the Landlord's application for dispute resolution with leave to reapply. Leave to reapply does not extend any applicable limitation period.

Section 89(1) of the Act provides that 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*];
- (f) by any other means of service provided for in the regulations.

As there is no provision allowing the service of the Tenants' application for dispute resolution by posting on the door, I find that the Tenants have not served their application, notice of hearing and evidence as required under the Act. I therefore dismiss the Tenants' application with leave to reapply. Leave to reapply does not extend any applicable limitation period.

Conclusion

Both applications are 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 Act.

Dated: July 06, 2022

Residential Tenancy Branch