



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL, MNRL, MNDL-S, MNDCL

Introduction

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

- an Order of Possession for cause, pursuant to sections 47 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage or compensation, pursuant to section 67;
- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:22 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 11:00 a.m. The landlord and the landlord's daughter attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. 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, the landlord's daughter and I were the only ones who had called into this teleconference.

The landlord and the landlord's daughter were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The landlord and the landlord's daughter testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the *Act*, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made

by the director commits an offence and is liable on conviction to a fine of not more than \$5 000.”

Preliminary Issue- Service

Section 89(1) of the *Act* states 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*].

The landlord testified that he served the tenants with a copy of this application for dispute resolution, but he did not have any proof of service.

Rule 3.5 of the Residential Tenancy Branch Rules of Procedure (the “Rules”) states:

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 the landlord has failed to prove service in accordance with section 89 of the *Act* as required by Rule 3.5 of the Rules. The landlord’s application for dispute resolution is therefore dismissed with leave to reapply. The landlord is cautioned that at any future hearing, the landlord will have to prove service as set out in Rule 3.5 in accordance with section 89 of the *Act*.

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: July 28, 2022

Residential Tenancy Branch