



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, FFL
 CNR-MT, AAT

Introduction

This hearing was scheduled to convene at 11:00 a.m. on October 11, 2022 concerning applications made by the landlord and by the tenants. The landlord has applied for an Order of Possession and a monetary order for unpaid rent or utilities; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application. The landlord's application was made by way of the Direct Request Process which was referred to this participatory hearing, joined to be heard with the tenants' application. The tenants have applied for more time than prescribed to dispute a notice to end the tenancy; an order cancelling a notice to end the tenancy for unpaid rent or utilities; and an order that the landlord allow access to the rental unit or property for the tenants or the tenants' guests.

The landlord and both tenants attended the hearing, and the landlord was joined by a person identified as a co-owner of the rental property.

At the commencement of the hearing, the parties agreed that the given name of the landlord as contained in the tenants' application is spelled incorrectly, and I amended it during the hearing. The Style of Cause on the frontal page of this Decision reflects that amendment.

During the course of the hearing, the tenants advised that the landlord has not been served with the tenants' Hearing Package. The tenants also gave different versions of what was served to the tenants by the landlord.

The landlord testified that on July 21, 2022 the tenant (JJ) was served with the landlord's Hearing Package which included the evidentiary material, however the landlord did not receive a Notice of Dispute Resolution Proceeding to give to the tenants

until August 12, 2022. The co-owner advised that the tenants were individually served with the landlord's Hearing Package and evidence but does not know when.

The *Residential Tenancy Act* requires as follows:

Special rules for certain documents

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*];
- (f) by any other means of service provided for in the regulations.

(2) 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.

Since the landlord has applied for monetary compensation, the landlord must serve the documents in one of the methods set out in Section 89 (1) as set out above, and must serve each of the tenants individually.

Since the tenants have not served the landlord, I dismiss the tenants' application without leave to reapply.

The *Act* also states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the Notice given is in the approved form. Neither the landlord nor the co-owner were able to provide any evidence or testimony as to when the tenants were served with the landlord's Hearing Package, and there are time limits. Since I cannot be satisfied that the tenants received the landlord's evidentiary material prior to the hearing, I cannot consider the evidence. Therefore, I cannot be satisfied that any notice to end the tenancy was given in the approved form, and I dismiss the landlord's application with leave to reapply.

Conclusion

For the reasons set out above, the tenants' application is hereby dismissed in its entirety without leave to reapply.

The landlord's application is hereby 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: October 11, 2022

Residential Tenancy Branch