



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, OPM, OPN, MNDL-S, MNDCL-S, FFL

Introduction

This hearing was scheduled to convene at 11:00 a.m. on January 5, 2023 concerning an application made by the landlord seeking the following relief:

- an order of possession for breach of an agreement;
- an order of possession due to a mutual agreement to end the tenancy;
- an order of possession due to the tenant giving notice to end the tenancy;
- a monetary order for damage to the rental unit or property;
- a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement;
- an order permitting the landlord to keep the security deposit or pet damage deposit; and
- to recover the filing fee from the tenant for the cost of the application.

The landlord attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for in excess of 10 minutes prior to hearing any of the landlord's testimony, and no one for the tenant joined the call.

The landlord testified that the tenant was served with the Notice of Dispute Resolution Proceeding by registered mail on October 6, 2022. The landlord had applied for a Substituted Service order by sending the documents to the tenant by email, but the application was dismissed. The landlord advised that the Notice of Dispute Resolution Proceeding was received by the landlord on September 9, 2022, which was the same day that the landlord applied to serve the tenant substitutionally. The Substituted Service Decision is dated September 20, 2022. The landlord contacted the Residential Tenancy Branch about how to serve, and was advised to serve the documents by

registered mail. The tenant did not provide the landlord with a forwarding address, and the landlord served the documents to the address of the rental unit.

I have reviewed the case file and documents in this matter. The *Residential Tenancy Act* specifies that a party who makes a claim must serve the opposing party within 3 days. Where a statute specifies “must” I have no discretion.

In this case, the landlord was provided with a Notice of Dispute Resolution Proceeding on September 8, 2022 with instructions to serve the tenant by September 11, 2022. The landlord advised that it was received on September 9, 2022 and on that date the landlord applied for a substitutional service order, which was dismissed on September 20, 2022. Therefore, the landlord ought to have served the tenant by no later than September 23, 2022. Since the landlord didn’t serve the tenant until October 6, 2022, I dismiss the landlord’s application with leave to reapply.

During the course of the hearing the landlord also indicated that the tenant and all subtenants have vacated the rental unit, and the landlord has possession. Therefore, I dismiss the landlord’s applications for an order of possession without leave to reapply.

Since the landlord has not been successful with the application the landlord is not entitled to recovery of the filing fee.

Conclusion

For the reasons set out above, the landlord’s applications for an order of possession are hereby dismissed without leave to reapply.

The landlord’s application for a monetary order for damage to the rental unit or property is hereby dismissed with leave to reapply.

The landlord’s application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed with leave to reapply.

The landlord’s application for an order permitting the landlord to keep all or part of the security deposit or pet damage deposit is hereby dismissed with leave to reapply.

The landlord’s application for a monetary order to recover the filing fee is hereby dismissed without 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: January 05, 2023

Residential Tenancy Branch