



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

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

- an order of possession for unpaid rent and utilities pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended this hearing.

Preliminary Issue: Service of Landlord's Application

At the outset of the hearing, the tenant advised that he only became aware of the hearing date 3 days ago as he received a reminder e-mail from the Residential Tenancy Branch. The tenant testified that the landlord did not serve him with this Application for Dispute Resolution (the "Application").

The landlord originally repeatedly testified that he served the Application to the tenant in person at 4:20 p.m. on September 23, 2022.

The tenant responded that he only received a pamphlet from the landlord which included some text messages and calculations for outstanding rent.

The landlord was asked if this pamphlet also included a copy of the Application package to which the landlord responded that the Application package was served by Registered Mail on July 18, 2022. It was explained to the landlord that the Application could not have been served on July 18, 2022 as the application was not filed by the landlord until

August 4, 2022. The landlord was insistent that the Application was served on July 18, 2022, by registered mail. The Arbitrator even tried to explain to the landlord that it was likely the 10 Day Notice that was served on July 18, 2022 and not the Application but the landlord continued to insist that it was served on July 18, 2022.

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 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 document]...*

(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].*

I find the landlord has provided insufficient evidence that the tenant has been served with the landlord's application for dispute resolution in a manner required under section

89 of the *Act*. I find the landlord could not have served the tenant on July 18, 2022 as per the landlord's testimony as the Application was not filed until August 4, 2022.

Further, the Notice of Dispute Resolution Hearing was made available to the landlord on August 19, 2022. Therefore, the landlord would have been required to serve this on the tenant by August 22, 2022. There was no evidence of this being done.

Conclusion

I dismiss the landlord's application with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

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 03, 2023

Residential Tenancy Branch