



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

This hearing, adjourned from a Direct Request process in which a decision is made based solely on the written evidence submitted by the landlord, dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

While the landlord, LA, hearing by way of conference call, the tenant did not. I waited until 11:09 a.m. to enable the tenant to participate in this scheduled hearing for 11:00 a.m. During the hearing, I also confirmed from the online teleconference system that the landlord, his daughter, and I were the only ones who had called into this teleconference.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. The landlord confirmed that they understood.

At the outset of the hearing, the landlord confirmed that the tenant had moved out on July 31, 2022, and that they had paid the outstanding rent for this tenancy. As the tenancy had come to an end, and as the outstanding rent was paid, these portions of the landlords' application is cancelled.

Preliminary Issue - Service of the Landlord's Application for Dispute Resolution

The landlord requested reimbursement of the filing fee for this application. The landlord testified that they had attempted to serve the tenant with a copy of the Notice of Hearing by way of text message and email, but did not receive a reply.

Section 89 of the Act establishes the following special rules for service of documents for a dispute resolution hearing..

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].*

(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 am not satisfied that the tenant was served in accordance with one of the methods required by section 89 of the *Act*. Accordingly, the landlords' application for recover of the filing fee is 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: January 03, 2023

Residential Tenancy Branch