



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPC, MNRL, MNDL-S, FFL

Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- an order of possession pursuant to s. 55 after issuing a One-Month Notice to End Tenancy;
- a monetary order pursuant to s. 67 for unpaid rent;
- a monetary order pursuant to s. 67 for compensation for damage to the rental unit caused by the tenant, their pets, or guests; and
- return of the filing fee pursuant to s. 72.

O.S. appeared as the Landlord and was joined by his partner D.M.. The Tenant did not attend the hearing.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

At the outset of the hearing, I enquired whether the Tenant still resided at the rental unit. I was advised that the Tenant vacated sometime at the end of October 2022, though the Landlord and D.M. were uncertain. I was further told that the Tenant was definitively gone by October 31st. I am told the Tenant has not provided a forwarding address.

I also enquired how and when the Tenant was served with the Notice of Dispute Resolution for the hearing. I was advised that the Tenant had been served via mail sent on October 27, 2022. The Landlord provides photographs of the package sent to the Tenant, which shows it was sent via Xpresspost.

Section 89 of the *Act* establishes the methods of serving documents for dispute resolution hearings. I reproduce it below:

- 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.
- (3) A notice under section 87.5 *[notice of administrative penalty]* must be given in a manner referred to in subsection (1).

Policy Guideline #12 provides further guidance with respect to the service provisions under the *Act* and specifies registered mail is a method in which delivery confirmation to a named person is available, which in the case of Xpresspost requires the signature option be used.

Leaving aside whether the signature option was selected in this instance, the main issue I have with respect to service under the circumstances is that the documents must have been served to the address in which the Tenant resides. It is unclear to me when she moved out of the rental unit, though I accept that she was gone by October 31, 2022. This leaves service via registered mail difficult. If I were to accept the Tenant was still at the rental unit on the 27th, I would be left to apply the deemed service provision of s. 90(a) of the *Act* as the Tenant was not at the hearing to confirm receipt. If I were to do so under the circumstances, the Landlord's application materials would be deemed to have been received on November 1, 2022, which is after the Tenant had vacated the rental unit.

When this was explained to the Landlord, I was further advised that the Tenant had been served by posting the application documents to her door on October 26, 2022. I am told the Tenant confirmed receiving the Notice of Dispute Resolution by way of text message sent to the Landlord on that date. Accepting that the Landlord's application under s. 55 for an order of possession would have triggered s. 89(2), which permits service by way of posting documents in a conspicuous place, I have been provided no proof that the documents were, in fact, posted to the door nor have I been provided with a copy of the text message referred to by the Landlord at the hearing. Also, I am uncertain when the Tenant moved out, such that I may very well run into the same issue mentioned above by making use of the deemed service provision of the *Act* such that it would be deemed to have been received after the Tenant vacated the rental unit.

I appreciate the Landlord's frustration in this, particularly the delay in having his application heard from when it was filed. Unfortunately, the Residential Tenancy Branch has been unable to schedule matters in a timely fashion due to significant caseload demand. However, a basic component of ensuring a procedurally fair process is to ensure that respondents have been given notice of the hearing, the claims made against them, and be permitted the opportunity to provide a response. That cannot occur if a respondent is not served with the application.

Based on the evidence provided, I am unable to find that the Tenant was served with the Landlord's application materials. Accordingly, I dismiss the Landlord's monetary claims under s. 67 of the *Act* with leave to reapply. However, the claim under s. 55 of the *Act* for an order of possession is dismissed without leave to reapply as the Landlord has already taken possession of the rental unit. Further, the Landlord's claim for the filing fee under s. 72 of the *Act* is also dismissed without leave to reapply due to failure to adequately demonstrate service under the circumstances.

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: February 24, 2023

Residential Tenancy Branch