



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes: OPR, OPM, MNDCL, FFL

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 or utilities, pursuant to section 55;
- an Order of Possession as the parties agreed to end the tenancy by way of Mutual Agreement, pursuant to section 55;
- a monetary order for monetary loss or money owed pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:29 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing with their husband, and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord, landlord's husband, and I were the only ones who had called into this teleconference for this hearing.

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 parties in attendance confirmed that they understood.

At the outset of the hearing, the landlord confirmed that the tenant had moved out on December 6, 2022, and that they no longer required an Order of Possession.

Accordingly, this portion of the landlord's application was cancelled. The hearing proceeded to deal with the landlord's monetary claims.

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

The landlord filed their original application on September 22, 2022, and subsequently amended their application on November 8, 2022 to add additional claims. The landlord testified in the hearing that they placed the dispute resolution package in the doorway of the tenant's home in a large brown envelope. The landlord testified that they knocked on the door, and heard someone yelling from behind the window. The landlord testified they saw the tenant come out to grab the package, and received a text message afterwards from the tenant.

The landlord testified that as the tenant moved without providing a forwarding address, the amendment package and additional evidence were emailed and texted to the tenant, and tenant's daughter. The landlord testified that they also communicated this to the tenant through social media.

The landlord submitted additional evidence one day before the scheduled hearing, on February 6, 2023.

Section 89 of the *Act* establishes the following special rules for service of documents.

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.

Section 43(1) of the *RTB Regulation* sets out the requirements for email service.

43 (1) For the purposes of section 88 (j) *[how to give or serve documents generally]* of the Act, the documents described in section 88 of the Act may be given to or served on a person by emailing a copy to an email address provided as an address for service by the person.

RTB Policy Guideline #12 provides further clarification about the requirements for email service of documents as noted below:

The Regulation to the Residential Tenancy Act and the Manufactured Home Park Tenancy Act prescribes service to an email address provided for service as an acceptable method of serving documents. Documents may be served by sending a copy of the document to the email address provided as an address for service by the person to be served. If no email address for service has been provided, then this method of service should not be used. Parties may face delays or risk their application being dismissed if service is not effected in accordance with the legislation. If service by email is used, the person serving the document will need to provide proof that the document sent by email was sent to the email address provided by the other party. Satisfactory proof may include a print out or screen shot of:

- o RTB 51 – Address for Service or other document that sets out the party's email address for service;*
- o the sent item, including the email address the item was sent to;*
- o a confirmation of delivery receipt;*
- o a response to the email by the party served;*
- o a read receipt confirming the email was opened; or*
- o other documentation to confirm the party has been served.*

As noted above, the requirement for email service in accordance with sections 88 of the Act, and section 43(1) of the *Regulation* is that the document must be sent to an email address provided for service by the person who is being served. RTB Policy Guideline #12 clearly states that "If no email address for service has been provided, then this method of service should not be used."

In this case, I am not satisfied that the landlord had provided sufficient evidence to support that the tenant had provided an email address to the landlord for the specific

purpose of service of documents. I find that the landlord has not satisfied the requirements for email service, and therefore any documents served through this method cannot be admitted for the purpose of this hearing.

The landlord testified that the tenant was serviced with their dispute resolution package and notice of hearing by dropping off the documents in a brown envelope in the tenant's door. The landlord testified that they heard someone from behind the door, and that they saw the tenant retrieve the package.

Although I believe that the landlord did attempt to serve the tenant, I am not satisfied that the landlord provided sufficient proof of service to support that the tenant was properly served through one of the methods required under section 89 of the Act as noted above. Although the landlord testified that they saw the tenant retrieve the package, the landlord did not provide any proof of service to show that this was witnessed by another party. I further note that text message and social media messaging is not an approved method of service under section 89 of the Act. I also note that the landlord was not in possession of a Substituted Service Order allowing the landlord to serve the tenant through an alternate method. The tenant did not submit any written evidence or a response confirming that they received these materials.

As the tenant did not attend the hearing to confirm that they were aware of the hearing date and time, or calling instructions to attend the teleconference call, and as I am not satisfied that the landlord had provided sufficient evidence to demonstrate that their application package and amendment was served to the tenant in accordance with section 89 of the Act. I dismiss the landlord's entire application and amendment with leave to reapply. Liberty to reapply is not an extension of any applicable time limits.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

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: March 02, 2023

Residential Tenancy Branch