



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPUM-DR, FFL

Introduction

This hearing was scheduled in response to the landlords' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for unpaid utilities and rent with a monetary order, pursuant to sections 55 and 67; and
- an authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Landlord KB attended. She was assisted by GB. The tenants did not attend, although I waited until 11:17 a.m. to enable the tenants to connect with this teleconference hearing scheduled for 11:00 a.m.

The landlord testified the tenants were served with the notice of hearing and evidence (the Materials) by posting it on the door of the tenants on October 22, 2019, at 12:23 p.m. The landlord also testified she witnessed one of the tenants getting the material a few minutes later.

In the hearing I decided that the entire application would be dismissed because of service of the Materials were not in accordance with the Act. However, after carefully reviewing the Act, I find that the application could proceed regarding the order of possession only.

Section 89 (2) (d) of the Act states:

(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:

(d)by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;

However, I note that the notice of hearing is dated November 07, 2019, so it is not possible for the landlord to have served the tenants the correct Materials on October 22, 2019.

I find that there is no evidence before me that establishes that the landlords were given leave to serve the Materials in an alternate fashion as ordered by a delegate of the director of the Residential Tenancy Branch in accordance with sections 89(1)(e) or 89(2)(e) of the *Act*.

Because the testimony regarding service of the Materials was conflicting with the documents provided, I am not satisfied the Materials were served according to the *Act*.

Based on the foregoing, I dismiss the landlords' application for an order of possession and a monetary order with leave to reapply. The landlords are at liberty to reapply for a new direct request application or participatory application.

As the landlords were not successful in this application, I find that the landlords are not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the landlords' application for an order of possession and for a monetary order with leave to reapply.

I dismiss the landlord's request to recover the \$100.00 filing fee paid for this application 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: December 31, 2019

Residential Tenancy Branch