Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPM, MNDL-S, MNRL-S, MNDCL-S, FFL

Introduction

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

- an order of possession based on a mutual agreement to end tenancy, pursuant to section 55;
- a monetary order for unpaid rent, for damage to the rental unit and for compensation under the *Act, Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application.

The tenant did not attend this hearing, which lasted approximately 23 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that he personally served the tenant with the landlord's application for dispute resolution hearing package for the order of possession claim only, on August 18, 2020. He claimed that his friend witnessed this service. When I notified the landlord that the notice of hearing was dated August 20, 2020, the landlord then claimed that the August 18, 2020 date was incorrect in his friend's email, who witnessed the personal service. He then stated that he served the tenant on August 20, 2020 in person. In accordance with section 89 of the Act, I find that the tenant was personally served with the landlord's original application for the order of possession on August 20, 2020.

The landlord stated that the tenant vacated the rental unit on September 1, 2020 and he did not require an order of possession because he already took back possession of the rental unit. I notified him that this application was dismissed without leave to reapply.

The landlord claimed that he amended his application on September 21, 2020. He stated that he added claims for a monetary order, to retain the tenant's security deposit and to recover the $100.00 application filing fee. He claimed that he served this amendment to the tenant's girlfriend in person and to an address provided by a co-worker of the tenant, for which he had a text message, but the landlord did not provide it for this hearing. He confirmed that he served the amendment by Expresspost mail, without a signature, on September 21, 2020. The landlord provided a Canada Post tracking number verbally during the hearing.

Rule 4.6 of the Residential Tenancy Branch *Rules of Procedure* states the following (my emphasis added):

> *4.6 Serving an Amendment to an Application for Dispute Resolution*
>
> *As soon as possible, **copies of the Amendment to an Application for Dispute Resolution form and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by section 89 of the Residential Tenancy Act** or section 82 of the Manufactured Home Park Tenancy Act and these Rules of Procedure.*
>
> *The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution form and supporting evidence as required by the Act and these Rules of Procedure.*
>
> *In any event, a copy of the amended application and supporting evidence should be served on the respondents as soon as possible and **must be received by the respondent(s) not less than 14 days before the hearing.***

Section 89(1) of the *Act* outlines the methods of service for an application for dispute resolution, which reads in part as follows (my emphasis added):

> *89 (1) An application for dispute resolution …, 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].

Residential Tenancy Policy Guideline 12 states the following, in part (my emphasis added):

> *Registered mail includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a* ***named person*** *is available.*
>
> *Proof of service by Registered Mail should include the original Canada Post Registered Mail* ***receipt containing the date of service, the address of service, and that the address of service was the person's residence at the time of service,*** *or the landlord's place of conducting business as a landlord at the time of service as well as a* ***copy of the printed tracking report****.*

Accordingly, I find that the landlord did not serve the tenant with the landlord's amendment, as required by section 89 of the *Act* and Residential Tenancy Policy Guideline 12. The tenant did not attend this hearing to confirm service.

The landlord served the amendment to the tenant's girlfriend, who is not a tenant or a named party in this application, and this does not comply with section 89 of the *Act* above. The landlord served the amendment by Expresspost without a signature, which does not comply with the registered mail requirement under section 89 of the *Act* and Residential Tenancy Policy Guideline 12. The landlord served the amendment to an address provided by someone other than the tenant, for which he did not have proof that it was the tenant's residential or forwarding address. The landlord did not provide a copy of the text message indicating this address. Further, the mail was deemed received by the tenant on September 26, 2020, five days after the mailing on September 21, 2020, as per section 90 of the *Act*, which is less than 14 days prior to this hearing date on October 5, 2020.

For the above reasons, I notified the landlord that his application was dismissed with leave to reapply, except for the $100.00 filing fee and the order of possession. I informed him that he could file a new application and pay a new filing fee, if the landlord wishes to pursue this matter further. The landlord confirmed his understanding of same.

Conclusion

The landlord's application for an order of possession and to recover the $100.00 filing fee is dismissed without leave to reapply.

The remainder of the landlord's application 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: October 05, 2020

Residential Tenancy Branch