



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, OPR

Introduction

This was a reconvened hearing which dealt with an Application for Dispute Resolution by the Landlord for an order of possession and a monetary order for unpaid rent. The landlord originally applied through the direct request process which, upon review, was scheduled for a conference call hearing in accordance with section 74 of the *Residential Tenancy Act*.

Although the Agent for the Landlord testified that the Landlord served the Tenant the Notice of Reconvened Hearing on October 23, 2010, the Tenant did not appear.

The Agent for the Landlord appeared, gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Has the Tenant been properly served with a Notice of Reconvened Hearing?

Background and Evidence

The affirmed testimony of the Agent for the Landlord indicated that the Notice of Reconvened Hearing was served by the Landlord on the husband of the Tenant, who resides with the Tenant, on October 3, 2010.

Analysis

The testimony supports the Notice of Reconvened was served by the Landlord on the husband of the Tenant. However there was no written proof of the service and the Landlord did not appear at the hearing.

Pursuant to Section 3.3 of the Rules of Procedure, if the respondent does not attend the dispute resolution proceeding, the applicant must prove the Dispute Resolution Officer that the respondent was served as required under the Act.

To do this, the person who served the documents must either attend the dispute resolution proceeding as a witness, either in-person or by conference call. If the person who served the documents is not available to attend, the applicant may submit as evidence an affidavit of service, sworn by the person who served the documents, informing the DRO how the service was accomplished.

Therefore I find that the service of the Notice of Reconvened Hearing was not proven in accordance with Section 3.3 of the Rules of Procedure.

To find in favour of an application for a monetary claim, I must be satisfied that the rights of all parties have been upheld by ensuring the parties have been given proper notice to be able to defend their rights. As I have found the service of documents not to have been effected in accordance with the *Act* and *Rules*, I **dismiss** the Landlord's claim, **with leave to reapply**.

Conclusion

I HEREBY DISMISS the Landlord's claim, 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: November 17, 2010.

Dispute Resolution Officer