



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MNR, FF

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for a monetary Order for unpaid rent and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were served to the Tenant by the occupant living in the upper rental unit. The Landlord does not know that date the documents were served to the Tenant.

No documentary evidence, such as an affidavit of service or a statutory declaration from the individual who allegedly served the Application for Dispute Resolution and Notice of Hearing, was submitted that establishes service of the Application for Dispute Resolution and Notice of Hearing.

The Landlord requested that the occupant who served the Application for Dispute Resolution and Notice of Hearing be called as a witness. The witness could not be contacted at the telephone number provided as the telephone call was redirected to an electronic answering device.

Analysis

The purpose of serving the Application for Dispute Resolution and Notice of Hearing is to notify the Tenant that a dispute resolution proceeding has been initiated and to provide her with the opportunity to participate in that hearing. The Landlord has the burden of proving that the Tenant was served with the Notice of Direct Request Proceeding.

I find that I cannot rely on hearsay evidence, which is inherently unreliable, to determine whether a third party served documents to the Tenant. In the absence of testimony from the individual who served the Tenant with the Application for Dispute Resolution and Notice of Hearing from the Landlord or documentary evidence in which that party declares that she served the documents on a particular date and time, I find that I am

unable to conclude, with any reasonable degree of confidence, that the Tenant was served with proper notice of this hearing in accordance with section 89 of the *Act*.

Conclusion

In the absence of evidence to establish that the Tenant was served with the Application for Dispute Resolution and Notice of Hearing in accordance with section 89 of the Act, I find that I cannot proceed with this hearing in the absence of the Tenant. As I am unable to proceed with this hearing, the Landlord's Application for Dispute Resolution 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: February 17, 2011.

Residential Tenancy Branch