



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

OPR, MNR, FF

Introduction

This hearing was convened to deal with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order for rent owed based on a Ten Day Notice to End Tenancy for Unpaid Rent. However, the landlord advised that the tenant vacated the unit at the end of on July 4, 2011, so an Order of Possession was no longer required. Only the landlord appeared.

Preliminary Matter

At the outset of the hearing the landlord testified that a third-party agent had served the tenant in person with the hearing documents. However this party was not present to give testimony regarding service.

The landlord was permitted time to reach the agent and the agent called in to the conference to give testimony regarding the service of the hearing package.

According to the agent, he attempted to personally serve the tenant with the hearing documents as required under the Act. However, the tenant would not respond and the agent was prevented from serving the document in person to the tenant. The landlord stated that he was aware that the package had to be served within 3 days and the agent therefore left the documents in the tenant's mailbox confident that the package was received by the tenant.

Sections 88 and 89 of the Act determine the method of service for documents. The Tenant has applied for a Monetary Order under section 38 and 67 of the Act which requires that the landlord serve the tenant as set out under Section 89(1). This requires service in one of the following ways:

(a) **by leaving a copy with the person, (personal service);**

(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*].

In this case the tenant served the documents in a manner not in compliance with the Act. Having found that the tenant has failed to prove adequate service of the Notice of Hearing and Application for Dispute Resolution I have determined that this application be dismissed with leave to reapply.

The landlord and the landlord's agent complained that the material provided by the Residential Tenancy Branch, with respect to making an application for dispute resolution, did not clearly indicate the service requirements for the Notice of Hearing and Application.

A copy of the Fact Sheet: *How to Serve Documents*, is enclosed with this decision.

Conclusion

I hereby dismiss the landlord's application 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: July 19, 2011.

Residential Tenancy Branch