



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, and to recover the cost of the filing fee from the Tenant for this application.

Issue(s) to be Decided

1. Has service of the hearing documents been completed in accordance with the *Residential Tenancy Act* and the *Residential Tenancy Branch Rules of Procedure*?

Background and Evidence

The Agent appeared at the hearing to represent the Landlord who is currently out of town. When I asked how the hearing documents were served to the Tenant the Agent advised the Landlord served them to the Tenant in person on July 12, 2011, at the rental unit.

I clarified several times that I needed to know how the hearing documents were served to the Tenant and I was not speaking about the 10 Day Notice for unpaid rent. The Agent stated that the Application for Dispute Resolution was filed at the Residential Tenancy Branch (RTB) on July 25, 2011 and the papers were delivered to the RTB on that date.

I clarified again that I needed to know how the hearing documents that were issued by the RTB were given to the Tenant. The Agent looked through his notes and said that he could not state which day they were given to the Tenant but he was certain they were hand delivered by the Landlord.

Analysis

The purpose of service documents under the *Residential Tenancy Act* is to notify the person being served of their breach and notification of their rights under the *Act* in response. The Landlord is seeking to end the tenancy due to a breach and so the Landlord has the burden of proving that the Tenant was served with all required documents in accordance with the *Residential Tenancy Act*.

Residential Tenancy Branch Rules of Procedure 3.3 stipulate that if a respondent does not attend the dispute resolution proceeding, the applicant must prove to the Dispute Resolution Officer that the respondent was served notice of the hearing as required under the *Act*. If served in person, the person who served the documents must either attend the dispute resolution proceeding either in-person or by conference call, or provide a sworn affidavit of service in their evidence.

As per the Agent's testimony the Landlord served the Tenant with the hearing documents in person and in his absence at the hearing I find the applicant has failed to prove service of the Notice of Dispute Resolution documents has been effected in accordance with the *Act*.

The Agent testified that the Landlord served the documents to the Tenant in person on July 12, 2011 which is 13 days before the application was made.

To find in favour of an application for an Order of Possession and a Monetary Order, 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*, I dismiss the Landlord's application, with leave to reapply.

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: August 25, 2011.

Residential Tenancy Branch