



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR

Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of the Act, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 30, 2011 at 3:30 p.m. the Landlord served the Tenant with the Notice of Direct Request Proceeding via registered mail. The proof of service document was received at the *Residential Tenancy Branch* November 23, 2011 at 3:24 p.m.

Issue(s) to be Decided

1. Has the Landlord proven service of the Direct Request Proceeding documents in accordance with section 89 of the *Residential Tenancy Act*?

Background and Evidence

The Landlord submitted Proof of Service of the Notice of Direct Request Proceeding which indicates inconsistent information pertaining to the date the Direct Request documents were sent registered mail to the Tenant. The Landlord declares that he served the Tenant on "Nov 30/11 at 3:30 p.m." via registered mail, a date that is still two days away and seven days after the application for dispute resolution was filed.

Analysis

When seeking to end a tenancy due to a breach a Landlord has the burden of proving that the Tenant was served with notice of the Direct Request Proceeding in accordance with section 89 of the Act.

Section 59(3) of the *Residential Tenancy Act* stipulates that notices of dispute resolution must be served to the respondent(s) within 3 days of filing the application.

In the presence of inconsistent information pertaining to the date the Direct Request Proceeding documents were served, or will be served on “Nov 30/11 at 3:30 p.m.” I cannot find that service was effected in accordance with the Act. Accordingly I dismiss the 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: November 28, 2011.

Residential Tenancy Branch