



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession, a monetary order for unpaid rent and the filing fee, and an order to retain the security deposit in partial satisfaction of the claim.

The Landlord provided affirmed testimony that he served the Tenant, by regular mail with the Application for Dispute Resolution and Notice of Hearing on October 20, 2011.

The Tenant did not participate in the conference call hearing.

The Landlord testified that the Tenant was not returning the calls they had made to his work phone number or his rental unit phone number. The Landlord testified that the Tenant moved out of the rental unit on October 20, 2011. PD, the Agent for the Landlord who served the Tenant the Application and Hearing Notice by regular mail, explained that he was inexperienced in the service of documents relating to residential tenancy disputes.

As the Notice of Hearing and Application for Dispute Resolution package were made available to the Landlord on October 18, 2011, there were a number of service methods available to them at that point in time. The Landlord stated that they had the Tenant's work contact details, so it is possible they could have personally served the Tenant at that location with a witness present. Landlord stated the Tenant was in the rental unit until October 20, so it is possible he could have been personally served there with a witness present. As the Tenant was still utilizing the rental unit as his residential address on October 18, 2011 and had made no attempt to move out at that time the Landlord could have served him by registered mail at that address and provided a tracking number and receipt as proof of service. However, the Landlord did not serve the Tenant prior to October 20, 2011, and he only attempted service through regular mail.

Section 89 of the Residential Tenancy Act, the "Act", provides specific rules for the service of the Application for dispute resolution package. Section 89 states:

Special rules for certain documents

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (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*].

I find that the Landlord failed to serve the Application and Notice of Hearing in accordance with section 89 of the Residential Tenancy Act (the "Act").

The Landlord's Application 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: November 10, 2011.

Residential Tenancy Branch