



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 keep all or part of the security deposit.

The Landlord provided affirmed testimony that her husband and a witness served the Tenant, with the Application for Dispute Resolution and Notice of Hearing on October 27, 2011, at the rental unit. The Landlord's husband and witness did not attend the hearing and the Landlord stated at the hearing that they were not available to attend the hearing. The Landlord provided no proof of service of the Application and Notice of Hearing in evidence in advance of the hearing.

The Tenant did not participate in the conference call hearing.

The Landlord testified that her husband and a witness served the Tenant with the 10 Day Notice to End Tenancy on October 17, 2011, in the parking lot at the Tenant's place of work. The Landlord stated that she made the Application for dispute resolution on October 26, 2011. The Landlord put the Tenant's work address as the Tenant's mailing address on the Application.

The Landlord stated that the Tenant owes rent for October and the rental income that was lost for November 2011, as the Landlord was unable to get a new Tenant until November 07, 2011. The Landlord states that the Tenant moved out on November 02, 2011 and did not provide a forwarding address. The Landlord requested to amend her Application for damages and losses for items they are missing from the suite after the Tenant moved out and a disposal fee for removing a sofa that the Tenant did not remove. The Landlord states that she outlined further details about her claim and the damages and losses in detail in her submission of evidence on November 08, 2011.

The Landlord stated that a copy of the evidence was served on the Tenant at her place of work on November 09, 2011 by leaving it at the front desk with her supervisor who confirmed she no longer works there but may be coming by later that week.

The Notice of Hearing and Application for Dispute Resolution package were made available to the Landlord on October 26, 2011. Section 59(3) of the Residential Tenancy Act, the "Act", requires that the applicant serve the respondent with the Application, which includes the Notice of Hearing, within three days. Section 89 of 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*].

The Residential Tenancy Branch Rules of Procedure ("Rules of Procedure") section 3.3 states the following with regards to proof of service of documents:

3.3 Proof of service required at the dispute resolution proceeding

If the respondent does not attend the dispute resolution proceeding, the applicant must prove to the Dispute Resolution Officer that each respondent was served as required under the Act.

The person who served the documents must either attend the dispute resolution proceeding as a witness, either in-person or by conference call. If the person who served the documents is not available to attend the dispute resolution proceeding, the applicant may submit as evidence an affidavit of service, sworn by the person who served the documents, informing the Dispute Resolution Officer how the service was accomplished.

With regards to the evidence submitted by the Landlord after the Application was made, the Rules of Procedure section 3.5 states the following:

3.5 Evidence not filed with the Application for Dispute Resolution

a) Copies of any documents, photographs, video or audio tape evidence that are not available to be filed with the application, but which the applicant intends to rely upon as evidence at the dispute resolution proceeding, must be received by the Residential Tenancy Branch and must be served on the respondent as soon as possible, and at least (5) days before the dispute resolution proceeding as those days are defined in the "Definitions" part of the Rules of Procedure.

As the Tenant did not attend the hearing, assessing proof of service of documents is a crucial before a monetary decision or order on the Landlord's claim can be made. I find that the Landlord has failed to prove of service of the Application, as the Landlord failed to have her husband and the witness attend the hearing or provide a sworn affidavit as

required by section 3.3 of the Rules of Procedure. I also note that with regards to the evidence the Landlord submitted, on November 08, 2011 to add to and amend her claim, her testimony confirmed that she was unable to serve this on the Tenant as she did not have a forwarding address. I do not find that the Landlord's evidence was properly served on the Tenant because leaving an envelope at a tenant's place of work or former place of work is not considered appropriate service of these types of documents, in accordance with section 88 of the Act.

I find that the Landlord failed to prove service of the Application on the Tenant in accordance with section 89 of the Act and 3.3 of the Rules of Procedure. I also find that the Landlord failed to properly serve the evidence submission on the Tenant in accordance with section 88 of the Act and section 3.5 of the Rules of Procedure.

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: December 06, 2011.

Residential Tenancy Branch