



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

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

The Landlord and her Agent appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the Landlord served the Tenant with notice of this proceeding in accordance with section 89 of the *Residential Tenancy Act*?

Background and Evidence

The Landlord's Agent affirmed she was the person who served the Tenant the Landlord's application for dispute resolution and the 10 Day Notice.

At first the Agent stated she served the application for dispute resolution and hearing documents to the Tenant on November 2, 2011. Then upon further clarification the Agent stated she could not remember which date she served the documents. The Landlord interrupted at that point and stated that she picked up the hearing documents and delivered them to her Agent on December 05, 2011 and requested that she serve the Tenant that day.

Service of the 10 Day Notice was then discussed at which point the Agent confirmed she served the Tenant in person on November 2, 2011.

A discussion followed whereby the Agent confirmed she had no record of the dates service was conducted for both the hearing documents and the 10 Day Notice as the Landlord had all of the documents.

Analysis

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 each respondent was served as required under the Act. If served in person, the person who served the documents must either attend the dispute resolution proceeding as a witness, either in-person or by conference call, and provide testimony as to how and when service was conducted.

The Evidence supports the Landlord's Agent is the person who served the Tenant with the application for dispute resolution hearing documents however she was not able to provide accurate testimony on the date service was conducted. Accordingly, I find the Landlord has not proven service has been conducted in accordance with section 89 of the Act.

To find in favour of an application for a monetary claim, 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 claim, with leave to reapply.

As the Landlord has not been successful with her application, I find that she is not entitled to recover the cost of the filing fee from the Tenant.

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: December 20, 2011.

Residential Tenancy Branch