



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION AND REASONS

Dispute Codes OPR MNR

Introduction and Preliminary Issue

This non-participatory 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 and a Monetary Order for unpaid rent.

On February 10, 2012, at 9:22 a.m., the landlord filed a signed Proof of Service of the Notice of Direct Request Proceeding (**the “Notice”**) which declares that on February 11, 2012, at 1:00 p.m., the landlord served the tenant with the Notice of Direct Request Proceeding via personal delivery. Therefore it was impossible that the landlord served the tenant the Notice on the date listed, if service of the hearing documents was accomplished, or in the alternative, that the tenant was served with the hearing documents prior to the landlord submitting a Proof of Service of the Notice of the Direct Request.

[emphasis added]

Conclusion

As the landlord submitted a Notice which does not contain an accurate service date, I cannot determine that the tenant was served the hearing documents in a manner complying with section 89 of the Residential Tenancy Act (the “Act”).

The purpose of serving documents under the *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 obtain an order of possession and end the tenancy due to this breach; however, the landlord has the burden of proving that the tenant was served with notice of the Direct Request Proceeding consistent with the requirements of the *Act*.

In the presence of inaccurate information pertaining to the service date of the Direct Request Proceeding documents I find that the landlord has failed to establish that service was in accordance with the *Act*. Having found that the landlord has failed to

prove service of the notice of Direct Request Proceeding, I **dismiss** the 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: February 13, 2012.

Residential Tenancy Branch