



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR

Introduction

This was a reconvened hearing which dealt with an Application for Dispute Resolution by the Landlord seeking an Order for Possession and a Monetary Order for unpaid rent. The Landlord originally applied through the direct request process which, upon review, was scheduled for a conference call hearing in accordance with section 74 of the *Residential Tenancy Act*. The landlord appeared and gave affirmed testimony.

Issue(s) to be Decided

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

Background and Evidence

At the outset of the hearing the Landlord affirmed that the Tenants vacated the property and he regained possession of the unit on March 18, 2012.

The Landlord advised that the Tenants refused to give him their forwarding address so he served the male Tenant with the March 19, 2012 decision and the notice of hearing documents for today's proceeding by leaving both packages with the receptionist at the male Tenant's place of employment.

Analysis

In the absence of the respondent Tenants the burden of proof of service of the hearing documents lies with the applicant Landlord. The Landlord affirmed that the hearing documents for each Tenant were left with the receptionist at the male Tenant's place of employment.

Section 89 (1) of the Act stipulates that 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*].

[My emphasis added]

Based on the aforementioned I find that service of the March 19, 2012 Decision and Notice of a Dispute Resolution Hearing documents were not effected in accordance with Section 89 of the *Residential Tenancy 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 that each person has 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.

Conclusion

I HEREBY DISMISS the Landlord's claim, 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: April 12, 2012.

Residential Tenancy Branch