



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, to keep all or part of a security deposit, and to recover the filing fee.

The tenant did not attend the hearing. Service of the Notice of a Dispute Resolution Hearing (the "Notice") was considered. The agent for the landlord stated that the Notice was served by his employee, FR, who allegedly served the tenant in person on June 21, 2012. The agent for the landlord was asked if the employee who allegedly served the tenant with the Notice, was available to provide witness testimony. The agent stated that the employee was out of the country on vacation. The agent for the landlord was then asked if the employee provide written confirmation that he served the tenant. The agent stated that the employee **did not** provide anything in writing confirming that he served the tenant.

Residential Tenancy Branch Policy Guideline #12 sets out the special requirements for service of documents. Where the respondent does not appear at a Dispute Resolution hearing, the applicant **must** be prepared to prove service under oath. The person who actually served the documents **must** either be available as a witness in the hearing to prove service, or provide a signed statement with the details of how the documents were served. Proof of service personally should include the date and time of service, the location of the person when served, and the name of the person served.

As the agent for the landlord confirmed that the person who served the Notice is out of the country and was not available as a witness, and did not provide written confirmation of service of the Notice, I find that the landlord had insufficient evidence of service of the Notice. The tenant has a right to a fair hearing which requires notice of the hearing. I, therefore, **dismiss the landlord's application with leave to reapply.**

I note this does not extend any applicable time limits under the *Act*.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 11, 2012

Residential Tenancy Branch