



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. At the outset of the hearing the Agent for the Landlord advised that the Tenant had vacated the rental unit and that an Order of Possession was not required.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Preliminary Matter

The purpose of serving the Application for Dispute Resolution and the Notice of Hearing to tenants is to notify them that a dispute resolution proceeding has been initiated and to give them the opportunity to respond to the claims being made by the landlord. When a landlord files an Application for Dispute Resolution in which the landlord has applied for a monetary Order, the landlord has the burden of proving that each tenant was served with the Application for Dispute Resolution in compliance with section 89(1) of the *Act*.

Section 89(1) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution in one of the following ways:

- (a) by leaving a copy with the person;
- (c) by sending a copy by registered mail to the address at which the person resides;
- (d) by sending a copy by registered mail to a forwarding address provided by the tenant;
or
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

The Landlord submitted no evidence to show that either Tenant was personally served with the Application for Dispute Resolution or Notice of Hearing and I therefore cannot find that either of them was served in accordance with section 89(1)(a) of the *Act*.

The Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the rental unit, via registered mail, on August 24, 2012. The Agent for the Landlord stated that the documents were sent to the rental unit in one package that was addressed to both Tenants. He stated that the package has been returned to the Landlord by Canada Post.

On the basis of the information provided by the Landlord, I am unable to determine which of the two Tenants has been served with the Application for Dispute Resolution by registered mail. I find it entirely possible that one of the Tenants received the notice of delivery but did not notify the other party. As I have insufficient evidence to determine which of the two Tenants was served with the package via registered mail, I am unable to conclude that either party has been served in accordance with section 89(1)(d) of the *Act*.

The Landlord submitted no evidence that the Application for Dispute Resolution was mailed to a forwarding address provided by either Tenant and I therefore cannot, find that either of them was served in accordance with section 89(1)(d) of the *Act*.

There is no evidence that the director authorized the Landlord to serve the Application for Dispute Resolution to either Tenant in an alternate manner, and I therefore cannot find that either of them was not served in accordance with section 89(1)(e) of the *Act*.

The Landlord submitted no evidence to cause me to conclude that either Tenant received the Application for Dispute Resolution, and I therefore cannot conclude that the Application has been sufficiently served to either Tenant pursuant to sections 71(2)(b) or 71(2)(c) of the *Act*.

Background and Evidence

As the Landlord has failed to establish that either Tenant was properly served with the Application for Dispute Resolution, the hearing did not proceed and no evidence was heard in regards to the Landlord's claim for compensation.

Analysis

As the Landlord has failed to establish that either Tenant was properly served with the Application for Dispute Resolution I find I am unable to consider the merits of the Landlord's Application for Dispute Resolution.

Conclusion

As I am unable to consider the merits of the Landlord's Application for Dispute Resolution, the Application is dismissed with leave to reapply. The Landlord retains the right to file another Application for Dispute Resolution regarding this matter.

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: September 25, 2012.

Residential Tenancy Branch