



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant at the rental site, via registered mail, on September 12, 2012. The Landlord submitted Canada Post documentation that corroborates this statement. The Landlord stated that she believes that her manager also posted the Application for Dispute Resolution and Notice of Hearing on the door of the rental unit, although she is not certain when it was posted.

The Landlord stated that the Tenant has not been seen at the site since June of 2012; he has not paid rent since May of 2012; and he has moved most of his belongings from the site/home. Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant has abandoned the manufactured home on the site and that he is no longer residing at the site.

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 the tenant was served with the Application for Dispute Resolution in compliance with section 82(1) of the *Act*.

Section 82(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 64 (1) [*director's orders: delivery and service of documents*].

The Landlord submitted no evidence to show that the Tenant was personally served with the Application for Dispute Resolution or Notice of Hearing and I therefore find that he was not served in accordance with section 82(1)(a) of the *Act*.

Based on the evidence submitted by the Landlord and in the absence of evidence to the contrary, I find that the Application for Dispute Resolution was mailed to the rental unit, via registered mail, on September 12, 2012. As I find it reasonable to conclude that the Tenant abandoned the rental unit prior to September 12, 2012, I cannot conclude that these documents were mailed to the address at which he resides. I therefore cannot conclude that he was served in accordance with section 82(1)(c) of the *Act*.

There is no evidence that the Application for Dispute Resolution was mailed to a forwarding address provided by the Tenant and I therefore cannot conclude that he was served in accordance with section 82(1)(d) of the *Act*.

There is no evidence that the director authorized the Landlord to serve the Application for Dispute Resolution to the Tenant in an alternate manner, therefore I find that she was not served in accordance with section 82(1)(e) of the *Act*.

When a landlord files an Application for Dispute Resolution in which the landlord has applied for an Order of Possession, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution in compliance with section 82(2) of the *Act*.

In addition to the aforementioned methods of service, section 82(2) of the *Act* authorizes a landlord to serve a tenant with an Application for Dispute Resolution in one of the following ways:

(c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;

(d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides.

There is no evidence that the Application for Dispute Resolution was left at the tenant's residence with an adult who apparently resides with the tenant, and I therefore cannot conclude that he was served in accordance with section 82(2)(c) of the *Act*.

Even if I had sufficient evidence to conclude that the Application for Dispute Resolution was posted on the door of the rental unit sometime in September of 2012, I cannot conclude that it was posted at the address at which the Tenant resides and I therefore cannot conclude that he was served in accordance with section 82(2)(d) of the *Act*.

The Landlord submitted no evidence to cause me to conclude that the Tenant received the Application for Dispute Resolution, therefore I cannot conclude that the Application has been sufficiently served pursuant to sections 64(2)(b) or 64(2)(c) of the *Act*.

As the Landlord has failed to establish that the Tenant was served with proper notice of these proceedings, I find that I cannot proceed with the hearing in the absence of the Tenant.

The Landlord's Application for Dispute Resolution is therefore dismissed with leave to reapply for a monetary Order.

I specifically note that the Landlord does not require an Order of Possession when the Landlord has reasonable grounds to conclude that the tenancy ended because the Tenant abandoned a manufactured home on the site, pursuant to section 37(1)(d) of the *Act*. The Landlord remains obligated, in such circumstances, to comply with sections 34, 35, 36, 37, 38, 39 and 40 of the *Manufactured Home Park Tenancy Regulation* when disposing of personal property left on the site.

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: October 15, 2012.

Residential Tenancy Branch