



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNDC, 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, a monetary Order for money owed or compensation for damage or loss, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Issue(s) to be Decided

The issue to be decided is whether this hearing can proceed in the absence of the Tenant.

Background and Evidence

The Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant at the rental unit, via registered mail, on September 15, 2012. The Landlord submitted Canada Post documentation that corroborates this statement. The Agent for the Landlord stated that she believes the Tenant vacated the rental unit on September 13, 2012.

The Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were also sent to the Tenant at an address she provided to the Landlord for her "emergency contact", via registered mail, on September 15, 2012. The Landlord submitted Canada Post documentation that corroborates this statement.

Analysis

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 89(1) of the *Residential Tenancy Act (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 the Tenant was personally served with the Application for Dispute Resolution or Notice of Hearing and I therefore cannot find that the Tenant was served in accordance with section 89(1)(a) of the *Act*.

On the basis of the evidence submitted by the Landlord and in the absence of evidence to the contrary, I find that the Tenant vacated the rental unit on September 13, 2012. I therefore find that the Application for Dispute Resolution that was mailed to the rental unit on September 15, 2012 was not served to the address at which the Tenant resides and I cannot, therefore, conclude that she was served in accordance with section 89(1)(c) of the *Act*.

The Landlord submitted no evidence to show that the Application for Dispute Resolution or Notice of Hearing was mailed to a forwarding address provided by the Tenant and I therefore cannot find that the Tenant was served in accordance with section 89(1)(d) of the *Act*. I note that an address for an “emergency contract” that is provided to the Landlord prior to the end of the tenancy is not, in my view, a forwarding address provided by the Tenant.

There is no evidence that the director authorized the Landlord to serve the Application for Dispute Resolution to the female Tenant in an alternate manner, therefore I find that she was not served in accordance with section 89(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 89(2) of the *Act*.

In addition to the aforementioned methods of service, section 89(2) of the *Act* authorizes a landlord to also serve a tenant with an Application for Dispute Resolution by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant or by attaching a copy to a door or other conspicuous place at the address at which the tenant resides.

The Landlord submitted no evidence to show that the Application for Dispute Resolution or Notice of Hearing was left at the Tenant's residence with an adult who lives with the

Tenant and I therefore cannot find that the Tenant was served in accordance with section 89(2)(c) of the *Act*.

The Landlord submitted no evidence to show that the Application for Dispute Resolution or Notice of Hearing was posted on the door of the Tenant's residence and I therefore cannot find that the Tenant was served in accordance with section 89(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 71(2)(b) or 71(2)(c) of the *Act*.

Conclusion

As the Landlord has failed to establish that the Tenant has been served the Application for Dispute Resolution and Notice of Hearing in accordance with the *Act*, I find it would be inappropriate to proceed with the hearing in the absence of the Tenant. I therefore dismiss the Application for Dispute Resolution, 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: October 17, 2012.

Residential Tenancy Branch