



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 was convened by way of conference call in response to the landlords application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenants security deposit; and to recover the filing fee from the tenant for the cost of this application.

The landlord appeared, however there was no in attendance for the tenant.

At the outset of the hearing the landlord advised that the tenant is no longer residing in the rental unit as from November 01 or November 02, 2012, and therefore, the landlord no longer requires an Order of Possession.

The landlord states that he served the tenants by leaving a copy of the hearing documents in the tenant's mail slot on October 16, 2012.

Analysis

Section 89 of the Act states that hearing documents must be given in one of the following ways:

- 89** (1) 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*].

According to section 89 of the Act, documents for Dispute Resolution cannot be served by posting them in the tenant's mail slot when the landlord is applying for a Monetary Order. Consequently, I am unable to determine that the tenant was sufficiently served for the purposes of the *Act*.

Section 12 of the Residential Tenancy Policy Guidelines states: Failure to prove service may result in the matter being dismissed, or dismissed with leave to reapply.

Conclusion

To find in favour of an application, I must be satisfied that the rights of all parties have been upheld by ensuring the parties have been given proper notice to be able to defend their rights. In the absence of proof that the tenants were served with the hearing documents in accordance with the section 89 of the *Act*, I dismiss the landlord's application 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: November 21, 2012.

Residential Tenancy Branch