



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, OPC, MNDC, MNR, MND, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession; a monetary Order for money owed or compensation for damage or loss; for a monetary Order for unpaid rent; for a monetary Order for damage; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution. As the Tenant is not residing in the rental unit, an Order of Possession is not required.

The Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the female Tenant, via registered mail, at the address noted on the Application, on November 15, 2012. The Landlord cited a Canada Post tracking number that corroborates this statement. He stated that the package was unclaimed and was returned to the sender.

The Landlord stated that a friend of his obtained the aforementioned service address from a popular social networking site; that he drove past that address; and that he observed the Tenant's vehicle parked at the address.

The Landlord stated that he has been unable to serve the Application for Dispute Resolution and Notice of Hearing to the male Tenant.

Issue(s) to be Decided

Is the Landlord is entitled to compensation for unpaid rent/loss of revenue; to compensation for damage to the rental unit; to retain all or part of the security deposit paid by the Tenant; and to recover the filing fee for the cost of this Application for Dispute Resolution?

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

On the basis of the undisputed evidence, I find that the Application for Dispute Resolution was sent to the service address, via registered mail. I find that I have insufficient evidence to show that the female Tenant resides at the service address. In reaching this conclusion I was influenced, in part, by the absence of evidence from the person who provided the service address to the Landlord, which might help me confirm the accuracy of the information provided. In the absence of additional evidence that convinces me that the female Tenant resided at that address in November of 2012, I simply cannot conclude that the Tenant resided at that address in November. I therefore cannot conclude that either Tenant was served in accordance with section 89(1)(c) of the *Act*

The Landlord submitted no evidence to show that either Tenant provided a forwarding address at the end of the tenancy and I therefore cannot conclude that either Tenant 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, therefore I cannot conclude that either Tenant was 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, 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 either Tenant has been properly served with the Application for Dispute Resolution, I dismiss the 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: February 14, 2013

Residential Tenancy Branch

