



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Huotari Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR

Introduction and Preliminary Matters

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order of possession for the rental unit due to unpaid rent and a monetary order for unpaid rent.

The landlord appeared; the tenants did not appear.

The landlord testified that the tenants were served with their application for dispute resolution and notice of hearing by leaving the documents with the tenants. In response to my question, the landlord said that his aunt served the documents personally to the tenants, and that a witness accompanied his aunt; however the landlord was unable to verify the date the documents were delivered.

There additionally was no affidavit from the landlord's aunt, the aunt did not attend the telephone conference call hearing, and I was unsuccessful in two attempts to contact the landlord's aunt to verify service of the documents.

Analysis and Conclusion

Section 89 of the Residential Tenancy Act requires that an application for dispute resolution be served upon the respondent (the tenants in this case) in person, by registered mail to the address at which the person resides, or if a tenant, by registered mail to the forwarding address provided by the tenant.

Residential Tenancy Branch Rules of Procedure (Rules) 3.3 states:

If the respondent does not attend the dispute resolution proceeding, the applicant (the landlord in this case) must prove to the arbitrator that each respondent was served as required under the Act.

The person who served the documents must either attend the dispute resolution proceeding as a witness, either in-person or by conference call. If the person who served the documents is not available to attend the dispute resolution proceeding, the applicant may submit as evidence an affidavit of service, sworn by the person who served the documents, informing the arbitrator how the service was accomplished.

In the case before me I find that the landlord failed to provide sufficient evidence that the tenants were served the notice of this hearing in a manner as required under section 89 of the Act as the person serving the documents neither appeared at the hearing or submitted an affidavit of service of the documents and as a result, I must dismiss the landlord's application.

As a further note after I had explained to the landlord why their application would be dismissed, the landlord complained that the Act favours tenants. I did inform the landlord that the Act, the Residential Tenancy Branch Regulations, and the Rules is the legislation dealing with residential tenancies and does not favour either party, only the party conforming to the legislation.

Conclusion

I hereby 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: June 04, 2013

Residential Tenancy Branch

