



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OPR, MNR, MNDC, FF

Introduction

This telephone conference call hearing was convened as the result of the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") for an order of possession for the rental unit due to unpaid rent, a monetary order for money owed or compensation for damage or loss and unpaid rent, and for recovery of the filing fee.

The landlord and the landlord's agent appeared; the tenant did not appear.

The landlord's agent testified that the tenant died, on July 17, 2013. In response to my question the landlord stated that the tenant was served with their application for dispute resolution and notice of hearing by leaving the documents with the tenant on July 11, 2013. In response to my question, the landlord's agent said that their son served the documents personally to the tenant.

Additionally there was no affidavit from the landlord's son, the son did not attend the telephone conference call hearing, and I was informed by the landlord's agent that their son was not available for questioning.

Analysis and Conclusion

Section 89 of the Residential Tenancy Act requires that an application for dispute resolution be served upon the respondent (the tenant 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 tenant was 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.

Conclusion

I hereby dismiss the landlord's application, with leave to reapply.

Dated: August 13, 2013

Residential Tenancy Branch

