



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT LP
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes:

MNR, OPR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord seeking an Order of Possession based on the Ten Day Notice to End Tenancy for Unpaid Rent, dated July 5, 2012, and a monetary order for rental arrears owed.

The landlord attended the hearing but the tenant did not appear.

At the outset of the hearing the landlord advised that the tenant had vacated the rental unit on July 18, 2013. Therefore the portion of the landlord's application seeking an Order of Possession is now moot.

However, the landlord is still seeking a monetary order for the rental arrears.

Preliminary Issue

The landlord's application for dispute resolution was made on July 26, 2013 and the landlord confirmed that, on July 31, 2013, the tenant was served with the hearing package sent by registered mail, addressed to the tenant at the subject address.

The applicant was able to provide a Canada Post tracking number to confirm this service by registered mail.

Section 90 of the Residential Tenancy Act determines that a document sent by registered mail is deemed to have been served in 5 days.

Section 89(1) of the Act states that application for dispute resolution 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; (My emphasis)

(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*].

In this instance I find that the service date for the initial Notice of Hearing, sent by registered mail on July 31, 2013 was deemed under section 90 of the Act to be served effective August 5, 2013.

However, I find as a fact that the tenant had already vacated the rental unit on July 18, 2013 and therefore this was no longer the address where the respondent was residing at the time the landlord served the hearing documents.

Based on the evidence before me, I find that the landlord failed to prove service by registered mail to the “*address at which the person resides*”, as specified by the Act.

Given the above, I find that the matter under dispute cannot proceed due to insufficient proof that the tenant was properly served. Accordingly, I dismiss this application with leave to reapply at a later date, should the landlord wish to do so once a current service address for the respondent has been found.

Conclusion

The landlord's application is dismissed for not proving service, 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: September 05, 2013

Residential Tenancy Branch

