



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on September 23, 2013, by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and to recover the cost of the filing fee.

Issue(s) to be Decided

Has the Landlord proven that the Tenant was sufficiently served notice of this proceeding?

Background and Evidence

At the outset of this proceeding I asked the Landlord if she affirmed to tell the truth here today. She responded using broken English and began her testimony about trying to get rent. I asked her the affirmation again at which time she stated that she did not understand English very well.

After several questions the Landlord indicated that she did not have anyone available to translate for her. I asked her to affirm to tell the truth a third time, after which she agreed. Then I asked how the Tenant was served the hearing documents and the Landlord stated "I gave them to her". After several clarifying questions the Landlord indicated that she sent the papers by registered mail through Canada Post.

The Landlord was not able to provide testimony pertaining to Canada Post tracking information. She read off numerous numbers what some type of receipt but she could not confirm that the receipt was a Canada Post receipt and I did not recognize any of the formation of numbers to be tracking numbers. The Landlord was not able to confirm to me that she could actually read the English receipt.

At this point ten minutes had expired and no one signed into the hearing on behalf of the Tenant. In the absence of evidence to prove the Tenant was sufficiently served notice of this proceeding I informed the Landlord that her application would be dismissed.

Analysis

The hearing package contains instructions on how the hearing will proceed and the requirement to provide a translator if a party cannot understand English. In this case the Landlord appeared at the hearing, without a translator, and indicated that she could not understand English very well.

Section 3.3 of the *Residential Tenancy Branch Rules of Procedure* stipulate that if the respondents do not attend the dispute resolution proceeding, the applicant must prove to the Dispute Resolution Officer that each respondent was served as required under section 89 (1) of the *Act*. The person who served the documents must either attend the dispute resolution proceeding as a witness, or submit as evidence to prove to the Arbitrator how and when the service was accomplished.

Based on the Landlord's inability to provide the tracking number of the registered mail, I find that there is insufficient evidence to prove the Tenant was served the hearing documents.

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 service of documents has been effected in accordance with the *Act*, I dismiss the Landlord's application with leave to reapply.

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: November 01, 2013

Residential Tenancy Branch

