



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR FF

Introduction

This hearing convened on September 25, 2013, at 9:00 a.m. and reconvened on November 7, 2013, at 1:00 p.m. to allow the Landlords to serve hearing documents to the Tenant at the corrected address. This decision should be read in conjunction with my interim decision of September 25, 2013.

The Landlord's Application for Dispute Resolution was filed on June 20, 2013, to obtain a Monetary Order for: damage to the unit, site or property; for unpaid rent or utilities, bank charges; and to recover the cost of the filing fee from the Tenant for this application.

The two Landlords appeared at this hearing; however no one appeared on behalf of the Tenant.

Issue(s) to be Decided

Have the Landlords met the burden to prove the Tenant was served notice of this proceeding in accordance with section 89(1) of the *Residential Tenancy Act*?

Background and Evidence

At the outset of this proceeding the Landlords stated that their son, J.R. was the person who re-served the Tenant with the notice of adjourned hearing, to the corrected address. They stated that their son told them that he sent them registered mail but the Landlords did not know the date or the tracking information pertaining to that service. They indicated that they were expecting their son to call into this proceeding so the line remained open for twelve minutes and no one signed in on behalf of their son during that time.

Analysis

Residential Tenancy Branch Rules of Procedure 3.3 stipulate that if a respondent does not attend the dispute resolution proceeding, the applicants must prove to the Arbitrator that each respondent was served as required under section 89(1) of the Act. The person who served the documents must attend the dispute resolution proceeding as a witness or provide a written affidavit of how and when service was conducted.

As per the Landlord's testimony it was his son, J.R., who served the Tenant the notices of reconvened hearing. In the absence of the Landlords' son, neither Landlord was able to provide testimony to prove the Tenant was properly served notice of this proceeding. There was no documentary evidence provided to prove the documents were sent by registered mail in accordance with the interim decision.

The September 25, 2013 interim decision stipulates "Notices of Reconvened Hearing are enclosed with this decision for the applicant to serve upon the Tenant, including all other required documents, within **three (3) days** of receiving this decision in accordance with section 89 of the Act."

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of the Landlords' son and the Tenant, the telephone line remained open while the phone system was monitored for twelve minutes and the neither person called into the hearing during this time.

Based on the above, I find there to be insufficient evidence to prove the Tenant was sufficiently served notice of this proceeding, in accordance with the Act.

To find in favour of an application for a monetary claim, 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. Accordingly, I dismiss the Landlords' monetary claim, with leave to reapply.

Conclusion

I HEREBY DISMISS the Landlords' claim, 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 07, 2013

Residential Tenancy Branch

