



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR MNR

Introduction

This hearing dealt with an Application for Dispute Resolution filed on October 3, 2013 and amended October 7, 2013, by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for unpaid rent.

The Landlord appeared at the teleconference hearing; however, no one appeared on behalf of the respondent Tenant.

Issue(s) to be Decided

Has the Landlord proven the Tenant has been sufficiently served notice of this proceeding?

Background and Evidence

At the outset of this proceeding the Landlord stated that the Tenant vacated the property over a period from October 4th to October 6th, 2013; therefore he was withdrawing his request for an Order of Possession.

The Landlord testified that he initially applied for a Direct Request proceeding and after the Tenant moved out his file was changed to this participatory hearing. When asked how he served the Tenant notice of this proceeding the Landlord initially stated that the documents were mailed to the Tenant by the *Residential Tenancy Branch*. After I explained that the Landlord was required to serve the documents, he stated he personally served the Tenant the Direct Request documents on October 3, 2013 but could not find out how he was served the hearing documents. He indicated the documents would have been served before the Tenant fully vacated the property.

Analysis

Section 89(1) of the Act stipulates that an application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, 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;
- (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 the absence of the respondent Tenant, the burden of proof of service of the hearing documents lies with the applicant Landlord. The Landlord testified that he served the Direct Request hearing documents in person; however, no Direct Request hearing documents were created or sent to the Landlord. The Landlord then stated the *Residential Tenancy Branch* mailed the documents to the Tenant and when advised that would not be the case the Landlord changed his testimony to say he personally served the Tenant prior his vacating the unit on October 6, 2013. I note the hearing documents were not prepared until October 8, 2013; therefore, they could not have been served on or before October 6th, 2013. Therefore, I find there to be insufficient evidence to prove the Tenant was served with Notice of this proceeding, in accordance with the Act.

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. As I have found the service of documents not to have been effected in accordance with section 89 of the Act, I dismiss the Landlord's claim, with leave to reapply.

Conclusion

I HEREBY DISMISS the Landlord's claim, with leave to reapply.

This dismissal does not extend any time limits set forth in the *Residential Tenancy Act*.

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: January 06, 2014

Residential Tenancy Branch

