



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNDC FF

Introduction and Analysis

This hearing dealt with the landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the filing fee.

The landlord attended the hearing. The tenant did not attend the hearing. As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") and Application for Dispute Resolution (the "Application") were considered. The landlord testified that the Notice of Hearing and Application was served personally on the tenant on March 25, 2014 and was witnessed by her brother, "YM". At the outset of the hearing, the landlord was asked if she was alone and under oath she confirmed she was. The landlord was also advised that should any person enter the room she was in, that she must immediately advise me so that I was aware. The landlord later confirmed that her brother, "YM" was in the room with her and she did not advise me when he entered, however, wanted him to testify. "YM" was excluded as a witness, as I explained to the landlord that his testimony would be tainted given that he already heard her testimony regarding service. As a result, I did not hear from the landlord's brother, "YM" during the hearing.

The landlord testified that she first attempted to mail the tenant the Notice of Hearing and Application but was unable to provide me the date she mailed the package, and stated that there was a problem as the landlord held the tenant's mailbox key.

I note that the hearing package indicates that the landlord applicant must serve the Notice of Hearing document within 3 days of receiving the Notice of Hearing. In the matter before me, the landlord claims she served the Notice of Hearing and Application 18 days after the Notice of Hearing document was provided to the landlord on March 7,

2014. Based on insufficient evidence regarding when the Notice of Hearing and Application was served by mail, and the landlord's witness being excluded due to the landlord failing to follow my direction at the start of the hearing, and given that the tenant was not present at the hearing, I am not satisfied that the tenant has been sufficiently served under the *Act*. Based on the above, I find the tenant has not been sufficiently served with the Notice of Hearing and Application.

Both parties have the right to a fair hearing. The tenant would not be aware of the hearing without having received the Notice of a Dispute Resolution Hearing and Application. Therefore, **I dismiss** the landlord's application **with leave to reapply** as I am not satisfied that the tenant has been sufficiently served with the Notice of Hearing and Application. I note this decision does not extend any applicable time limits under the *Act*.

I also note that the landlord failed to serve the Residential Tenancy Branch with documentary evidence, such as a copy of the 10 Day Notice to End Tenancy in support of her Application for an order of possession. The landlord was reminded that the Notice of Hearing document states under #1, the following:

"Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing. Instructions for evidence processing are included in this package. Deadlines are critical."

[reproduced as written]

Conclusion

The landlord's application is dismissed with leave to reapply due to a service issue.

This decision does not extend any applicable time limits under the *Act*.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: April 24, 2014

Residential Tenancy Branch

