



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 Preliminary Matters

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order of possession for the rental unit due to unpaid rent, a monetary order for money owed or compensation for damage or loss and for unpaid rent, and for recovery of the filing fee.

The landlord appeared; the tenant did not appear.

In response to my question, due to the non-attendance of the tenant, the landlord stated that the tenant was served with his application for dispute resolution and notice of hearing by leaving the documents with the tenant. In further explanation, the landlord said that his friend delivered the hearing documents to the landlord's son, who delivered the hearing documents to the tenant; additionally the landlord was unable to verify the date the documents were delivered.

There additionally was no affidavit from the landlord's son, the son did not attend the telephone conference call hearing, and the landlord's son was not made available for questioning during the hearing to verify service of the documents.

Analysis and Conclusion

Section 89 of the Residential Tenancy Act requires that an application for dispute resolution be served upon the respondent (the tenant in this case) in person, by registered mail to the address at which the person resides, or if a tenant, by registered mail to the forwarding address provided by the tenant.

Residential Tenancy Branch Rules of Procedure (Rules) 3.3 states:

If the respondent does not attend the dispute resolution proceeding, the applicant (the landlord in this case) must prove to the arbitrator that each respondent was served as required under the Act.

The person who served the documents must either attend the dispute resolution proceeding as a witness, either in-person or by conference call. If the person who served the documents is not available to attend the dispute resolution proceeding, the applicant may submit as evidence an affidavit of service, sworn by the person who served the documents, informing the arbitrator how the service was accomplished.

In the case before me I find that the landlord failed to provide sufficient evidence that the tenant was served the notice of this hearing in a manner as required under section 89 of the Act as the person serving the documents neither appeared at the hearing or submitted an affidavit of service of the documents.

As the landlord failed to provide sufficient evidence that the tenant was served as required under the Act, I dismiss the landlord's application, with leave to reapply.

Dated: May 19, 2014

Residential Tenancy Branch

