



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, FF

Introduction:

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent and Unpaid Utilities, a monetary Order for unpaid rent and utilities, and to recover the fee for filing an Application for Dispute Resolution.

Issue(s) to be Decided:

Is the Landlord entitled to an Order of Possession and to a monetary Order for unpaid rent and/or utilities?

Background and Evidence:

The male Landlord stated that on March 13, 2014 he served the Application for Dispute Resolution and the Notice of Hearing to the male Tenant, via registered mail. He was unable to locate a copy of the Canada Post receipt for that mailing so he was unable to cite a Canada Post tracking number.

The male Landlord stated that he did not intend to proceed with the claim against the female Tenant so he did not serve her with a copy of the Application for Dispute Resolution and the Notice of Hearing.

Analysis

The purpose of serving the Application for Dispute Resolution and the Notice of Hearing to tenants is to notify them that a dispute resolution proceeding has been initiated and to give them the opportunity to respond to the claims being made by the landlord.

When a landlord files an Application for Dispute Resolution in which the landlord has applied for a monetary Order, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution in compliance with section 89(1) of the *Residential Tenancy Act (Act)*.

Section 89(1) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution in one of the following ways:

- (a) by leaving a copy with the person;
- (c) by sending a copy by registered mail to the address at which the person resides;
- (d) by sending a copy by registered mail to a forwarding address provided by the tenant;
or
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

When a landlord files an Application for Dispute Resolution in which the landlord has applied for an Order of Possession, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution in compliance with section 89(2) of the *Act*.

Section 89(2) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution in one of the following ways:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by registered mail to the address at which the tenant resides;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides; or
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

On the basis of the undisputed testimony, I find that neither Tenant was personally served with the Application for Dispute Resolution and the Notice of Hearing, pursuant to section 89(1)(a) or 89(2)(a) of the *Act*.

On the basis of the undisputed testimony, I find that the Application for Dispute Resolution and Notice of Hearing was not mailed to the female Tenant and I cannot, therefore, conclude that she was served in accordance with section 89(1)(c), 89(1)(d), or 89(2)(b) of the *Act*.

I find that the Landlord has submitted insufficient evidence to show that the male Tenant was served the Application for Dispute Resolution and Notice of Hearing by registered mail. In reaching this conclusion I was heavily influenced by the absence of a Canada Post receipt to corroborate the male Landlord's testimony that the document was mailed to the Tenant, via registered mail, and by the Landlord's inability to cite a tracking

number to corroborate that testimony. I cannot, therefore, conclude that the male Tenant was served in accordance with section 89(1)(c), 89(1)(d), or 89(2)(a) of the *Act*.

There is no evidence that the director authorized the Landlord to serve the Application for Dispute Resolution and Notice of Hearing to either Tenant in an alternate manner, therefore I find that neither Tenant was served these documents in accordance with section 89(1)(e) or 89(2)(e) of the *Act*.

On the basis of the undisputed testimony, I find that the Application for Dispute Resolution and the Notice of Hearing were not left at the rental unit. I cannot, therefore, conclude that either Tenant was served with these documents in accordance with section 89(2)(c) or 89(2)(d) of the *Act*.

Conclusion

As the Landlord has failed to establish that the Application for Dispute Resolution and Notice of Hearing were served in accordance with the *Act*, I am unable to proceed with this hearing in the absence of the Tenant. The Landlord's Application for Dispute Resolution is dismissed, 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: April 16, 2014

Residential Tenancy Branch

