



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on March 13, 2014, by the Landlord to obtain a Monetary Order for: unpaid rent or utilities; to keep the security deposit; and to recover the cost of the filing fee from the Tenant for this application.

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 she recalls that the Tenant was served with copies of their application for Dispute Resolution and the Notice of Hearing documents by mail. She clarified that it would have been sent by registered mail but she could not provide the date they were sent or the Canada Post tracking information as that information was being held by her head office.

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 they served the documents by registered mail; however, she could not provide testimony of the date they were served or the tracking information. 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 insufficient evidence to prove that 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: July 04, 2014

Residential Tenancy Branch

