



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL CNR O FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on June 4, 2014, and amended on June 9, 2014, by the Tenant to obtain Orders to cancel a 2 Month Notice for landlord's use of the property; to cancel a 10 Day Notice for unpaid rent; for other reasons, and to recover the cost of the filing fee from the Landlords for this application.

Issue(s) to be Decided

Should this application for dispute resolution be dismissed with or without leave to reapply?

Background and Evidence

Upon review of the Tenant's application for dispute resolution the Tenant affirmed that the documents he had pertaining to this tenancy listed an incorporated real estate service company as the Landlord. The Tenant submitted that his lawyer completed his application for Dispute Resolution, listing the owners as the Respondents, so he did not know how his lawyer obtained their name. He stated that he served the respondent owners copies of his application and Notice of Dispute Resolution Hearing by e-mail.

The Tenant testified that he served the real estate company with copies of his applications for dispute resolution by e-mail and by personally delivering a copy to their office on June 4, 2014 and June 9, 2014, as they were agents for the named respondents.

The Tenant submitted that he had entered into a mutual agreement to end the tenancy on August 31, 2014 and was seeking an extension of two more weeks.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

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 named respondents, the burden of proof of service of the hearing documents lies with the applicant Tenant.

The Tenant testified that he served copies of his application and hearing documents to the named respondents by e-mail. The Tenant argued that the respondents' agent was also served copies of his hearing documents, despite the agent not being named as a respondent to this dispute. Furthermore, the Tenant provided no evidence to prove the named respondents were the owners of the property or that the agent was in fact working on behalf of the named respondents.

Service by email is not an approved method of service provided in section 89 of the Act, as listed above. Therefore, I find there to be insufficient evidence to prove the respondents were 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 appropriate 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 Tenant's claim, with leave to reapply.

Conclusion

I HEREBY DISMISS the Tenant'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 24, 2014

Residential Tenancy Branch

