

A matter regarding INTERLINK REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR MND MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on August 27, 2014, to obtain an Order of Possession for unpaid rent and a Monetary Order for: damage to the unit, site or property; unpaid rent or utilities; to keep all or part of the security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and was attended by the Landlord. 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

The evidence submitted by the Landlord included a Substitute Service Application. The Residential Tenancy Branch Record showed that a Substitute Service Order had been granted to the Landlord on August 26, 2014 and Ordered the Landlord to serve the Tenant twice, as follows:

- i. **leaving one copy** of the Hearing Package **addressed to the tenant** with the front desk or business entry employee at the business; and,
- ii. **sending one copy** of the Hearing Package by ordinary mail **addressed to the tenant** at the above-noted address.

On March 24, 2015 the Landlord provided affirmed testimony that he served the Tenant once via registered mail sent to the address of the Tenant's employer. The Landlord was not able to provide the exact date the package was sent registered mail and he was not able to provide the Canada Post tracking number. No documentary evidence had been submitted to the file nor was the Landlord able to provide testimony about the second method of service, as required by the substitute service order listed above.

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*]**. [My emphasis added by bolding].

In the absence of the respondent Tenant, the burden of proof of service of the hearing documents lies with the applicant Landlord. In absence of evidence to prove the Landlord served the Tenant in accordance with the substitute service order, I find that the Landlord has not met the requirements of service, as per section 89 of 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 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: March 25, 2015

Residential Tenancy Branch