



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR OPB MNR

Preliminary Issues

Upon review of the Landlord's application for Dispute Resolution and their claim for \$6000.00, the Landlord wrote the following in the details of their dispute:

Haven't got paid rent for December, January, February , March...

Based on the aforementioned I find the Landlord had an oversight or made a clerical error in not selecting the box *for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement* when completing the application, as they clearly indicated their intention of seeking to recover the payment for occupancy after the effective date of the 10 Day Notice. Therefore, I amend the Landlord's application to include the request for *money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement*, pursuant to section 64(3)(c) of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on March 04, 2015, by the Landlord to obtain an Orders of Possession for unpaid rent or utilities and for Breach of an Agreement; and a Monetary Order for: unpaid rent or utilities and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

The hearing was conducted via teleconference and was attended by the Landlord, the co-owner of the rental unit, and their witness, who all gave affirmed testimony.

Issue(s) to be Decided

Has the Landlord proven that each Tenant was sufficiently served notice of this proceeding?

Background and Evidence

At the outset of this proceeding the Landlord's witness provided affirmed testimony that he saw the Landlord hand the female Tenant with a copy of the 10 Day eviction Notice on February 19, 2015.

Both the Landlord and the co-owner testified that they served each Tenant with copies of their application for Dispute Resolution and the Notice of Hearing documents via registered mail; however, neither one could provide the date or the tracking information of the registered mail packages. The Landlord and co-owner were afforded 20 minutes during this hearing to try to locate the tracking information in order to prove service of their application to the Tenants. Unfortunately, they were not able to obtain or submit the required information.

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 Tenants at the teleconference hearing, the burden of proof of service of the hearing documents lies with the applicant Landlord. In absence of the date and tracking information for registered mail, I find there to be insufficient evidence to prove each Tenant was sufficiently 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 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: April 09, 2015

Residential Tenancy Branch

