



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR MNR

Introduction

This hearing dealt with an Application for Dispute Resolution filed on March 13, 2015, by the Landlord seeking an Order of Possession for unpaid rent and utilities and a Monetary Order for: unpaid rent and 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, No one attended on behalf of the Tenants.

Issue(s) to be Decided

Has the Landlord proven the Tenants have been sufficiently served notice of this proceeding?

Background and Evidence

At the outset of this proceeding the Landlord stated that he was present when his brother personally served each Tenant with copies of their application and notice of hearing documents. He was not able to testify as to the date that service occurred and stated that his brother, who filed the application, was currently out of town.

The Landlord testified that the Tenants vacated the property at the end of March 2015 and they did not provide a forwarding address, so the Landlord does not know where they are currently residing.

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, the burden of proof of service of the hearing documents lies with the applicant Landlord. The Landlord testified that he was present when his brother personally served the hearing documents to each Tenant, however, he did not have the information as to when this service was conducted. Therefore, I find there to be insufficient evidence to prove each Tenant was properly 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 there to be insufficient evidence to prove service of documents 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 20, 2015

Residential Tenancy Branch

