



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Quinsam Mobile Home Park
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPC, FF

Introduction

The hearing was convened in response to an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Cause and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on May 12, 2015 the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord submitted to the Residential Tenancy Branch in support of the Application for Dispute Resolution were sent to the rental unit, via registered mail, in a package addressed to the Respondent with the initials "G.U.". He stated that a second copy of these documents were included in the package for the Respondent with the initials "M.K.".

The Landlord submitted Canada Post documentation that corroborates the Landlord's testimony that a package was sent to the Respondent with the initials "G.U.", by registered mail, on May 12, 2015.

Issue(s) to be Decided

Have both Respondents been properly served with the Application for Dispute Resolution and the Notice of Hearing and, if so, is the Landlord is entitled to an Order of Possession?

Background and Evidence

The Landlord provided a significant amount of testimony in regards to this matter, most of which is not being recorded here for reasons that are outlined in my analysis.

The Landlord stated that the Respondent with the initials "G.U." owns the manufactured home but has not been living in it for approximately one year. He stated that he has rented the manufactured home to the Respondent with the initials "M.K.", with whom the Landlord does not have a tenancy agreement.

Analysis

Although I heard testimony regarding the issues in dispute at these proceedings, I concluded, upon reflection, that the hearing should not have proceeded in the absence of the Respondents. This decision is based on my determination that the Application for Dispute Resolution has not been served in accordance with section 82 of the *Manufactured Home Park Tenancy Act (Act)*.

The purpose of serving the Application for Dispute Resolution and the Notice of Hearing to respondent(s) is to notify them that a dispute resolution proceeding has been initiated and to give them the opportunity to respond to the claims being made by the applicant(s). When a landlord files an Application for Dispute Resolution in which the landlord applies for an Order of Possession, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution in compliance with section 82(2) of the *Act*.

Section 82(2) of the *Act* stipulates that an Application for Dispute Resolution must be served to a tenant in one of the following ways:

- by leaving a copy with the tenant;
- by sending a copy by registered mail to the address at which the tenant resides;
- by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
- as ordered by the director under section 64 (1) of the *Act*.

The Landlord submitted no evidence to show that either Respondent was personally served with the Application for Dispute Resolution or Notice of Hearing and I therefore cannot conclude that either Respondent was served in accordance with section 82(2)(a) of the *Act*.

The evidence shows that the Application for Dispute Resolution was mailed to the manufactured home in a package addressed to the male Respondent, who has not lived in the home for approximately one year. As the male Respondent is not currently living in the manufactured home, I cannot, conclude that he was served in accordance with section 82(2)(b) of the *Act*.

As there is no evidence that the Application for Dispute Resolution was mailed to the manufactured home in a package addressed to the female Respondent, I cannot conclude that the female Respondent was served in accordance with section 82(2)(b) of the *Act*. Mailing documents to a person in an envelope addressed to a third party does not satisfy service requirements, as there can be no reasonable expectation that the intended recipient will open mail addressed to a third party.

As there is no evidence that the Application for Dispute Resolution was left with either Respondent, I cannot conclude that either Respondent was served in accordance with section 82(2)(c) of the *Act*.

The Landlord submitted no evidence to show that the Application for Dispute Resolution or Notice of Hearing was posted at the manufactured home and I therefore cannot conclude that either Respondent was served in accordance with section 82(2)(d) of the *Act*.

There is no evidence that the director authorized the Landlord to serve the Application for Dispute Resolution to either Respondent in an alternate manner and I therefore cannot conclude that either Respondent was served in accordance with section 82(2)(e) of the *Act*.

The Landlord submitted no evidence to cause me to conclude that either Respondent received the Application for Dispute Resolution and I therefore cannot conclude that the Application has been sufficiently served pursuant to sections 64(2)(b) or 64(2)(c) of the *Act*.

As I am unable to conclude that either Respondent has been properly served with the Application for Dispute Resolution, the Application is dismissed with leave to reapply.

Conclusion

The Application for Dispute resolution has been dismissed with leave to reapply, which means the Landlord has the right to file another Application for Dispute Resolution, after which it must be served in accordance with the *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 *Act*.

Dated: June 25, 2015

Residential Tenancy Branch

