



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on May 1, 2015, to cancel a 1 Month Notice to end tenancy issued for cause.

The hearing was conducted via teleconference and was attended by the Tenant. No one appeared on behalf of the respondent Landlord.

Issue(s) to be Decided

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

Background and Evidence

At the outset of this proceeding the Tenant stated that he served the Landlord with copies of his application for Dispute Resolution and hearing documents by taping them to the Landlord's door. He indicated that this was the same way the Landlord had served him with the eviction notice so he thought he could do the same with his application and hearing documents.

The Tenant confirmed that he had been given documents about how this process worked but admitted that he may not have read them thoroughly enough to understand that he was required to serve his papers in a different manner. He later argued that the Landlord came to see him to discuss his application and that she had the papers in her hand at that time.

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 Landlord, the burden to prove service was conducted in accordance with the Act lies with the applicant Tenant. The Tenant testified that he served the hearing documents by posting them to the Landlord's door.

Section 89 of the Act does not provide for applications and hearing documents to be served by posting them to the door. Therefore, in absence of the Landlord, I find there to be insufficient evidence to prove the Landlord was served with Notice of this proceeding, in accordance with 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 insufficient evidence to prove the service of documents was done in accordance with section 89 of the Act, I dismiss the Tenant's application, with leave to reapply.

Conclusion

I HEREBY DISMISS the Tenant's application, with leave to reapply.

This dismissal does not extend any time limits set forth in the *Residential Tenancy Act*.

No findings of fact or law have been made regarding the 1 Month Notice to end tenancy issued April 31, 2015 [sic].

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: June 15, 2015

Residential Tenancy Branch

