



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – CNR, MNSD, FF
For the landlord – OPR, MNR, FF

Introduction

This hearing was originally convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for a Review Consideration of the decision and a Review Hearing was granted. The Review Hearing was scheduled for today's date at 09.00 a.m. Both parties' applications were due to be heard today. The tenant applied to cancel a 10 Day Notice to End Tenancy for unpaid rent and utilities; to recover the security deposit; and to recover the filing fee from the landlord for the cost of this application. The landlord applied for Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; and to recover the filing fee from the tenant for the cost of this application.

The hearing went ahead as scheduled; the landlord dialed into the conference call and was ready to proceed. The line remained open for 10 minutes; however, no one for the tenant dialed into the call.

At the outset of the hearing the landlord testified that the tenant was served in person with a copy of the Application and Notice of Hearing. In the review consideration decision it states that the landlord must serve the tenant with a copy of this Review Consideration Decision and a copy of the evidence provided for this review to the tenant along with the new Notice of Hearing for the Review Hearing held today. The landlord testified that the tenant vacated the rental unit on July 01, 2015; the Review Consideration Decision was dated July 02, 2015. The landlord did not receive this until after the tenant had vacated the rental unit. The landlord testified the tenant did not leave a forwarding address.

The landlord could not recall when service of any of these documents took place; however, testified that he did have his son as a witness. The landlord did not call his son into the hearing to give sworn testimony that service took place as required under s. 89 of the *Act*. At the originally hearing the tenant had testified that she was unaware that the landlord had filed a

cross application to be heard at the same time as the tenants. The originally Arbitrator wrote that as the landlord did not participate at that hearing there was no evidence before the Arbitrator to show that the landlord had served the tenant with notice of his claim. Without proof of service of the hearing documents for the original hearing or for the Review Hearing from the landlord I am not satisfied that the tenant has been served hearing documents by the landlord. 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. In the absence of proof that the tenant was served with the original hearing documents or the documents for the Review Consideration and the Notice of Hearing for the Review Hearing in accordance with the section 89 of the *Act* I dismiss the landlord's application with leave to reapply.

Based on the above I find that the tenant has failed to present the merits of their application; however, it is likely the tenant was not aware of the Review Hearing taking place today. I therefore dismiss the tenant's application with leave to reapply.

I refer the parties to s. 82(3) of the *Act* which states:

82 (3) Following the review, the director may confirm, vary or set aside the original decision or order.

As I have dismissed both applications today with leave to reapply I set aside the original decision pursuant to s. 82(3) of 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 *Residential Tenancy Act*.

Dated: September 02, 2015

Residential Tenancy Branch

