



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 the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for an Order of Possession for unpaid rent pursuant to section 55 and a monetary order for unpaid rent pursuant to section 67.

The tenant did not attend this hearing, although I waited until 9:31 am in order to enable the tenant to connect with this teleconference hearing scheduled for 9:00 am. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions.

Preliminary Issue: Service of Documents

This matter was reconvened after the landlord's original application was made through the Direct Request process. On review of the Direct Request Application, an adjudicator found that,

On the second page of the Proof of Service Notice to End Tenancy, there is no witness signature to confirm delivery of the 10 Day Notice.

I find that I am not able to confirm service of the 10 Day Notice to the tenant, which is a requirement of the Direct Request process, and that a participatory hearing is the only venue that will allow for the clarification of this fact.

At the outset of the hearing, I asked the landlord to clarify the time, date and method of service of the 10 Day Notice to End Tenancy. The landlord testified that the 10 Day Notice was personally served on September 26, 2015 by Witness JN. Witness JN attended this hearing and testified that the 10 Day Notice was personally served on October 21, 2015 and that the tenant refused to sign the proof of service document. As evidence to support her application, the landlord submitted a copy of the 10 Day

Notice to End Tenancy. That notice was dated September 26, 2015 with an effective date of October 9, 2015. The proof of service submitted with this application indicated that the 10 Day Notice was served by posting it on the rental unit door.

The landlord explained that she has issued several notices to end tenancy to the tenant as the tenant repeatedly fails to pay her rent. However, the landlord has failed to provide consistent evidence at this hearing to prove that a 10 Day Notice was served in accordance with the Act. The landlord was unable to clarify the time, date and method of service of the 10 Day Notice that she relies on in her application to end this tenancy.

Proper service of documents is essential to the Residential Tenancy Dispute Resolution process. Service of documents is restricted by timelines and methods of service to underscore its importance. Service of documents in the proper time, by the proper method and in a format that is accessible by the respondent is essential to ensure that the respondent is able to know and meet the case against them. Policy Guideline No. 12 provides further guidance with respect to service issues, indicating that failure to serve evidence properly may result in the hearing proceeding without that evidence being considered, the hearing being adjourned or the application being dismissed. The Rules of procedure only allows an arbitrator to consider an adjournment to prove service in unusual and exceptional circumstances.

Policy Guideline No. 12 states,

Where the respondent does not appear at a Dispute Resolution hearing, the applicant must be prepared to prove service under oath. The person who actually served the documents must either:

- o be available as a witness in the hearing to prove service, or*
- o provide a signed statement with the details of how the documents were served.*

Proof of service personally should include the date and time of service, the location of the person when served, and the name of the person served.

Before I can consider the merits of the landlord's application, I must be satisfied that the tenant has been sufficiently served with the 10 Day Notice in accordance with section 88 and 90 of the *Residential Tenancy Act*. I find the landlord has not provided sufficient evidence to prove that the tenant has been properly served with the notice to end tenancy. Given this finding, I dismiss the landlord's application with leave to reapply.

Conclusion

I dismiss the landlord's application with leave to reapply.

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: December 23, 2015

Residential Tenancy Branch

