



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, MNR

Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to sections 55(4) and 74(2) of the *Residential Tenancy Act (Act)*, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession and a monetary order.

Issue(s) to be Decided

Is the Landlord is entitled to an Order of Possession for unpaid rent and to a monetary Order for unpaid rent?

Background and Evidence

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 18, 2016 the Landlord personally served a person with the initials "J.H." with the Notice of Direct Request Proceeding.

The Landlord submitted no evidence that establishes the identity of "J.H.", who is not named on the Application for Dispute Resolution or the tenancy agreement. The Landlord submitted no evidence to establish that "J.H." is an adult and/or that he was living in the rental unit.

Analysis

The purpose of serving the Notice of Direct Request Proceeding is to notify a tenant that a dispute resolution proceeding has been initiated.

When a landlord applies for a monetary Order, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution in compliance with section 89(1) of the *Residential Tenancy Act (Act)*.

Section 89(1) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution in one of the following ways:

- (a) by leaving a copy with the person;
- (c) by sending a copy by registered mail to the address at which the person resides;
- (d) by sending a copy by registered mail to a forwarding address provided by the tenant;
or
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

When a 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 89(2) of the *Residential Tenancy Act (Act)*.

Section 89(2) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution in one of the following ways:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by registered mail to the address at which the tenant resides;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides; or
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

The Landlord submitted no evidence to show that the Tenant was personally served with the Notice of Direct Request Proceeding and I therefore cannot conclude that she was served in accordance with sections 89(1)(a) or 89(2)(a) of the *Act*.

The Landlord submitted no evidence to show that the Notice of Direct Request Proceeding was mailed to the Tenant and I therefore cannot conclude that she was served in accordance with sections 89(1)(c), 89(1)(d), or 89(2)(c) of the *Act*.

I find that the Landlord has submitted insufficient evidence to establish that the Notice of Direct Request Proceeding was served to the Tenant in accordance with section 89(2)(c) of the *Act*. Although the Proof of Service submitted in evidence declares that on January 18, 2016 the Landlord personally served a person with the initials "J.H." with the Notice of Direct Request Proceeding, no evidence was submitted to establish this party is an adult or that he lives in the rental unit.

The Landlord submitted no evidence to show that the Notice of Direct Request Proceeding was posted at the Tenant's residence and I therefore cannot conclude that she was served in accordance with section 89(2)(d) of the *Act*.

There is no evidence that the director authorized the Landlord to serve the Notice of Direct Request Proceeding in an alternate manner and I therefore cannot conclude that she was served in accordance with sections 89(1)(e) or 89(2)(e) of the *Act*.

The Landlord submitted no evidence to cause me to conclude that the Tenant received the Notice of Direct Request Proceeding and I therefore cannot conclude that the Application has been sufficiently served pursuant to sections 71(2)(b) or 71(2)(c) of the *Act*.

As the Landlord has failed to establish that the Notice of Direct Request Proceeding was served to the Tenant in accordance with section 89 of the *Act*, I dismiss the Application for Dispute Resolution with leave to reapply.

Conclusion

The Application for Dispute Resolution has been dismissed as the Landlord failed to establish that the Tenant was served with the Notice of Direct Request Proceeding in accordance with section 89 of the *Act*. The Landlord retains the right to file another Application for Dispute Resolution for a monetary Order and/or an Order of Possession.

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: January 23, 2016

Residential Tenancy Branch

