



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlords on February 12, 2016. The Landlords filed seeking an Order of Possession and a Monetary Order for unpaid rent and to recover the cost of his filing fee from the Landlord.

The hearing was conducted via teleconference and was attended by the Landlords' Agent. No one appeared on behalf of the respondent Tenants.

Issue(s) to be Decided

Have the Landlords proven each Tenant has been sufficiently served notice of this proceeding?

Background and Evidence

At the outset of this proceeding the Landlords' Agent stated she was attending the hearing on behalf of the Landlords because the Landlords were currently out of the country. She said she was handed some papers to review at the hearing.

I explained to the Agent that the first step is for her to provide evidence as to how each Tenant was served with a copy of the Landlords' application for Dispute Resolution and the Notice of Hearing Documents. The Agent stated she did not understand my question and so I explained my question to the Agent five additional times in different ways.

When the Agent was still not able to provide the information regarding service, I requested that she tell me the title of the pages had in front of her. I asked her one last time how each Tenant was served a copy of the Landlords' application for Dispute Resolution and the Notice of Hearing Documents and she still could not answer my question.

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*].

Rule of Procedure 7.4 stipulates evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

In the absence of the respondent Tenants, the applicant Landlords or their Agent bears the burden of proof that service of the hearing documents was completed in accordance with the *Act*. The Agent was not able to prove service therefore, I find there was insufficient evidence to prove service was effected in accordance with 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 there was insufficient evidence to prove service of the application and hearing documents, I dismiss the Landlords' claim, with leave to reapply.

Conclusion

The Landlords' Agent was not able to prove service of the application and hearing documents upon to the Tenants and the application was dismissed, with leave to reapply.

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

Dated: March 09, 2016

Residential Tenancy Branch

