



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NJW HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlord on March 9, 2016. The Landlord filed seeking an Order of Possession and a Monetary Order for unpaid rent and/or utilities, to keep the security deposit; and to recover the cost of his filing fee.

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

Issue(s) to be Decided

Has the Landlord proven each Tenant has been sufficiently served notice of this proceeding?

Background and Evidence

At the outset of this proceeding the Landlord stated he was unable to serve the Tenants with copies of his application and Notice of hearing documents because when he attended the rental unit on March 15, 2016 the Tenants had already moved out.

The Landlord confirmed he regained possession of the rental unit on March 15, 2016.

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 Tenants, the applicant Landlord 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 Landlord's application, with leave to reapply.

Conclusion

The Landlord was not able to prove service of the application or hearing documents upon 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*.

This decision is final, legally binding, and 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: April 25, 2016

Residential Tenancy Branch