



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC O MNDC MNR MNSD FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for an Order of Possession for Cause pursuant to section 55; a monetary order for unpaid rent, damage or loss pursuant to section 67; authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; any other remedy under the Act; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:45am in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30am. The landlord and her assistant attended the hearing and were given a full opportunity to be heard, to present sworn testimony, and to make submissions.

Preliminary Issue: Service

The landlord originally testified that she served the tenants with the Application for Dispute Resolution on June 1, 2016 (1 day prior to her filing the Application for Dispute Resolution). The landlord then testified that she served the tenants with the Application for Dispute Resolution ("ADR") on June 3, 2016 by personal service. Shortly thereafter the landlord testified that she served the tenants with the ADR June 6, 2016.

The landlord did not submit any documentary evidence for this hearing that could assist in her recall or proof with respect to the service of the documents to notify the tenants of this application and hearing. Based on the landlord and her assistant's testimony, it did not appear that she was certain of the dispute resolution process regarding service of documents and proof of service.

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. It is essential that a party be able to prove that they have sufficiently served the documents for a Residential Tenancy Dispute Resolution hearing.

Residential Tenancy Policy Guideline No. 12, with respect to the terms of service at section 88 to 90 in the *Act* states that, when the respondents (in this case two tenants) do not appear at a Dispute Resolution hearing, **the applicant must be prepared to prove service under oath**. The tenant provided uncertain testimony as to the details of service, particularly the date of service of the ADR and Notice of Hearing.

Prior to considering the details of the applicant's claim, I must be satisfied that the landlord/applicant sufficiently served the other party, allowing that party an opportunity to know the case against them and attend the dispute resolution hearing.

Given the lack of detail and certainty in providing evidence with respect to service, I find that the landlord was unable to prove that the two tenants were served with the dispute resolution documents and were therefore aware of this dispute resolution hearing. Therefore, I must dismiss the landlord's application.

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: July 12, 2016

Residential Tenancy Branch