



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF

Introduction

This review hearing was scheduled to be heard to re-visit an application by the landlord for an Order of Possession and monetary order for unpaid rent as well as to recover the filing fee for the original application. On May 26, 2016, the original dispute resolution hearing was conducted addressing the landlord's application pursuant to section 55, 67 and 72 of the Residential Tenancy Act ("the Act"). On May 27, 2016, the original Arbitrator issued a decision dismissing the landlord's application.

As a result of a review application by the landlord on June 8, 2016, a review hearing was granted on the basis of new and relevant evidence. The Residential Tenancy Branch provided a Notice of Review Hearing with a copy of the review consideration decision. In that decision, the original Arbitrator stated,

*Since a review hearing has been granted pursuant to the landlord's application for such, as provided under section 81(4) of the Act, **the landlord must serve the tenant with a copy of this decision and the Notice of Hearing within three (3) days of receiving this decision.** I am satisfied the landlord has been provided the tenant's service address since it appears on the first page of the tenant's Application for Dispute Resolution that was included in the landlord's submissions for this review consideration.*

Preliminary Issue: Service of Hearing Documents

The landlord and the landlord's son both attended this hearing. The landlord's son testified that he served the tenant with the Notice of Hearing ("the Notice") for this hearing date by posting the Notice on the rental unit door June 14, 2016. The landlord's son submitted that he had no other address for the tenants and that the tenants continue to attend to the residential premises to bother his family. Therefore, the landlord's son submits, it is possible that the tenants received the Notice. The tenant's landlord testified that the tenants vacated the residence on or about May 21, 2016.

Proper service of documents is essential to the Residential Tenancy Dispute Resolution process to notify the respondent of the application and the hearing information related to the application. Service of documents is restricted by timelines and methods of service to underscore its importance. Beyond proper service, it is also 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, in considering the terms of service at section 88 to 90 in the *Act* states that, when the respondent (in this case the tenant) does not appear at a Dispute Resolution hearing, the applicant (the landlord) must be prepared to **prove service under oath**. I find the landlord did not provide sufficient evidence to prove that the tenant was served with the documents to provide notification of this 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.

I find that the landlord has not sufficiently proven that the tenant was in fact served in accordance with the *Act* allowing the tenant to be aware of the landlord's application and this dispute resolution review hearing. Therefore, 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: July 25, 2016

Residential Tenancy Branch

