



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlords on July 14, 2016. The Landlords filed seeking an Order of Possession for cause and to recover the cost of his filing fee.

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

Issue(s) to be Decided

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

Background and Evidence

At the outset of this proceeding the Landlord M.S. testified it was his mother who served the Tenant with copies of their application for Dispute Resolution and Notice of hearing documents. He stated he was not aware of the date that service occurred; however, he had knowledge that the papers were handed from his mother's hand to the Tenant's wife's hand.

M.S. confirmed he was the Landlord who completed the online application for Dispute Resolution and that he provided his personal email address to the Residential Tenancy Branch (RTB) with that application. He asserted he never received a response from the RTB via email and they received the hearing documents from the RTB by mail.

Upon further clarification M.S. confirmed that he did not know if the Tenant had been served copies of their application for Dispute Resolution and Notice of hearing documents. He confirmed he did not print documents from his email to be served to the Tenant regarding this application and hearing.

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.

The Residential Tenancy Branch (RTB) record states the applicant was sent the notice of hearing; application for Dispute Resolution; hearing documents; assembly instructions, and a Fact Sheet #114 on July 28, 2016 via email.

In the absence of the respondent Tenant, the applicant Landlords bear the burden of proof that service of the hearing documents was completed in accordance with the *Act*. The Landlord was not able to provide evidence of service upon the Tenant and in consideration of the RTB record, I find there was insufficient evidence to prove that service of the application and hearing documents were 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' application for Dispute Resolution, with leave to reapply.

Conclusion

The Landlords were not able to prove service of the application and hearing documents upon to the Tenant 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: September 15, 2016

Residential Tenancy Branch

