



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SOUTH OKANAGAN SIMILKAMEEN BRAIN INJURY SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNDC MNR MNSD O FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for a monetary order for unpaid rent, damage and loss pursuant to section 67; authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; 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 1:43 pm in order to enable the tenant to connect with this teleconference hearing scheduled for 1:30 pm. The landlord/applicant attended the hearing and was given an opportunity to be heard on the issue of service of documents.

Preliminary Issue: Service of Documents

The landlord testified that the tenant was served with the landlord's Application for Dispute Resolution ("ADR") with a Notice of Hearing on February 29, 2016 by registered mail to the tenant's "last known address". On providing further information, the landlord testified that the landlord's ADR was mailed to the tenant at the rental unit address.

Preliminary Analysis re: Service

The landlord testified that the tenant was removed from her rental unit by February 10, 2016. She testified that the tenant provided no forwarding address to the landlord. The landlord testified that she believed other mail addressed to the tenant has been forwarded from the rental unit address to a new address however she was unable to provide any details or evidence to support this claim.

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 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 respondents (in this case the tenant) do not appear at a Dispute Resolution hearing, the applicant (the landlord) must be prepared to prove service under oath. Prior to considering the details of the applicant's claim, particularly an application to end a tenancy, I must be satisfied that the landlord/applicant sufficiently served the other parties, allowing those parties an opportunity to know the case against them and attend the dispute resolution hearing. At this hearing, the landlord was not able to sufficiently prove that the tenant had been served with the ADR including the Notice of Hearing.

Given the lack of detail and certainty in providing evidence with respect to service, I find that the landlord was unable to show that the tenant was served with the dispute resolution documents and therefore aware of this dispute resolution hearing. I find that the landlord has not proven service of documents for this hearing.

Conclusion

I dismiss the landlord's application with leave to reapply. Any applicable timelines for this application will still apply.

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: October 07, 2016

Residential Tenancy Branch