



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR

Introduction

This hearing dealt with the landlord's application pursuant to the Residential Tenancy Act ("the Act") for an Order of Possession for Unpaid Rent pursuant to section 55 and a monetary order in the amount of \$15, 390.00 for unpaid rent pursuant to section 67.

The tenants did not attend this hearing, although I waited until 11:14 am in order to enable the tenants to connect with this teleconference hearing scheduled for 11:00 am. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions.

The landlord's initial application was made as a direct request – an ex parte paper process requiring no participatory hearing. On review of the landlord's materials for the direct request procedure, the decision maker determined that the landlord's application should be adjourned to a participatory hearing in order to ensure that service of the hearing documents was sufficient to meet the requirements of the *Residential Tenancy Act*. In that decision, with a Notice of Hearing attached, the decision maker wrote,

...As the landlord will have to serve the tenant with a Notice of a Reconvened Hearing, it may be advisable for them to serve all of the original Notice of Direct Request documentation with the Notice of a Reconvened Hearing in accordance with Section 89(1) of the Act so that the monetary portion of the claim can be heard.

Conclusion

I order that the direct request proceeding be reconvened in accordance with section 74 of the Act. I find that a participatory hearing to be conducted by an arbitrator appointed under the Act is required in order to determine the details of the landlord's application.

Notices of Reconvened Hearing are enclosed with this interim decision for the applicant to serve, with all other required documents, upon the tenants within three (3) days of receiving this decision in accordance with section 89 of the Act.

The landlord testified that the 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") was personally served to an adult living in the residence at the rental unit on June 30, 2016 however the landlord was unable to provide clear testimony regarding service of the landlord's original Notice of Direct Request or the more pertinent Application for Dispute Resolution package ("ADR") with the Notice of Hearing for this date.

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 the tenants) do not appear at a Dispute Resolution hearing, **the applicant must be prepared to prove service under oath**. The landlord was unable to provide detailed or certain testimony as to service, particularly the date of service of the 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 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 without 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: October 05, 2016

Residential Tenancy Branch

