



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

matter regarding REMAX COMMERCIAL SOLUTIONS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPB, MNR, MNDC, FF

Introduction

This hearing was scheduled to hear a landlord's application for an Order of Possession and a Monetary Order for unpaid rent and damage or loss under the Act, regulations or tenancy agreement. The landlord's agent confirmed that the tenant had vacated the rental unit at the end of April 2016 and the keys were returned and an Order of Possession was not required. Accordingly, this application pertains to a monetary claim only.

The tenant did not appear at the hearing. The landlord's agent testified that the hearing documents were sent to the tenant via registered mail on May 25, 2016 using the address that appeared on her tenancy application form. The landlord's agent explained that they used that address for service because the tenant had not left a forwarding address and because the landlord had heard that the tenant was going to move back to that address, which was the home of the tenant's ex-husband. The registered mail was returned to the landlord and the envelope was marked as "moved". The landlord's agent testified that after the return of the registered mail, on June 8, 2016 the owner of the rental unit went to the address used to send the registered mail and talked to the tenant's ex-husband. According to the landlord's agent, the owner told the agent that the tenant's ex-husband told him that the tenant was residing there on a temporary basis and he would give documents to the tenant. The tenant's ex-husband did not provide written confirmation that he received the hearing documents or that he would give the hearing package to the tenant. The owner gave the hearing package to the tenant's ex-husband on June 8, 2016 as evidenced by a Proof of Service signed by the owner of the rental unit. The landlord's agent confirmed that he has received no response from the tenant after the hearing package was left with the tenant's ex-husband.

Dispute resolution proceedings are based on the principles of natural justice. Natural justice requires that a respondent be informed of the nature of the claim and the monetary amount being sought against them so as to provide the respondent the opportunity to respond or defend herself. This is one of the primary purposes for serving the Application for Dispute Resolution and the Notice of Hearing upon the respondent.

Where a respondent does not appear at a hearing, the applicant must be prepared to prove service occurred in a manner that complies with the Act. An applicant must serve an application that pertains to a monetary claim in accordance with section 89(1) of the Act. Section 89(1)

provides that the respondent is to be served in person; by registered mail to an address that is the tenant's forwarding address or the tenant's address of residence at the time of mailing; or, using another method so ordered by the Director.

In this case, the landlord did not have an Order for Substitute Service that would permit service in another way. Serving the hearing package upon the tenant's ex-husband is not personal service upon the tenant. Accordingly, it was before me to determine whether the registered mail sent on May 25, 2016 was sufficient.

As provided in Residential Tenancy Policy Guideline 12: *Service Provisions*, where registered mail is used to serve a tenant, the landlord must be prepared to prove that the address used for service is the tenant's forwarding address or address of residence. Since the tenant did not leave a forwarding address I must consider whether the evidence before me is sufficient to establish the address used was the tenant's address of residence at the time of mailing. The evidence before me consists of a registered mail envelope marked as "moved" and double hearsay that the tenant was living at that address on a temporary basis without indication as to the dates she was residing there. I find this evidence insufficient to satisfy me that the address used to send the registered mail was the tenant's address of residence at the time of mailing.

In light of the above, I decline to proceed to hear the claims against the tenant and the landlord's application is dismissed with leave to reapply. The landlord remains at liberty to file another application within the statutory time limit for filing so as to serve the tenant in one of the manners that complies with section 89(1) of the Act.

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: November 17, 2016

Residential Tenancy Branch