



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding QUAY WEST PROPERTIES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MND, MNSD, MNDC, FF

Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession for unpaid rent and a Monetary Order in the amount of \$6,565.00 for unpaid rent; damage to the rental unit; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. The tenant did not appear at the hearing.

Where a respondent does not appear at a hearing, the applicant bears the burden to prove the respondent was served in a manner that complies with the Act and Rules of Procedure.

The landlord testified that the landlord's Application for Dispute Resolution was served upon the tenant in person by the landlord's manager on January 16, 2017; however, the landlord's Application for Dispute Resolution had not been processed by the Residential Tenancy Branch at that time and a Notice of Hearing and Dispute Resolution Fact Sheet did not accompany the paperwork served upon the tenant. Since the documents sent on this date did not include the Notice of Hearing and Dispute Resolution Fact Sheet, as required by Rule 3.1 of the Rules of Procedure, the tenant was not put on notice as to the date of the hearing and I did not consider service on this date to meet the service requirements of the Rules of Procedure.

After the hearing package was generated, the landlord sent the hearing package to the tenant via registered mail on January 24, 2017 using the rental unit address. The landlord provided a receipt, including a registered mail tracking number, as proof of service. The registered mail was returned to the landlord as being unclaimed. A search of the registered mail tracking number showed that Canada Post made the first attempt at delivering the registered mail at 7:54 a.m. on January 26, 2017. The landlord had submitted evidence that after receiving a text message from the tenant, the landlord's agent attended the rental unit on January 26, 2017 at 7:30 a.m. and entered the rental

unit. The agent determined the unit had been abandoned and commenced efforts to remove abandoned property, clean, and make repairs.

Dispute resolution proceedings are based upon the principles of natural justice. One of principles of natural justice is that a person charged with an offence is entitled to be notified of the claims against them and the opportunity to provide a response or defence. For me to continue to hear a claim that has not been sufficiently served upon the respondent would violate the principle and the hearing would be procedurally unfair. A monetary claim sent to a tenant by registered mail must be sent to the tenant's address of residence or the tenant's forwarding address. Although the tenant may have been residing in the rental unit on January 24, 2017 the first attempt to deliver the registered mail was not until January 26, 2017 -- after it was determined the tenant had already abandoned the rental unit. Therefore, I find the tenant was not sufficiently served with notification of the landlord's original claim and notice of this hearing.

The landlord then attempted to amend the monetary claim to increase it substantially to nearly \$20,000.00 by way of a Monetary Order worksheet. The landlord did not submit an Amendment to an Application for Dispute Resolution as required under Rule 4.1 of the Rules of Procedure. The Monetary Order worksheet, and the landlord's evidence, was sent to the tenant via registered mail on February 1, 2017 using the rental unit address. The landlord stated that the tenant has not provided a forwarding address to the landlord. A search of the registered mail tracking number shows that the registered mail has not yet been picked up. I find the mailing of February 1, 2017 was insufficient to meet the landlord's service requirements as it was sent to an address at which the tenant no longer resided.

Since the tenant has vacated or abandoned the rental unit and the landlord has already taken possession the landlord's request for an Order of Possession is moot. As for the landlord's monetary claims, I find the tenant has not been sufficiently served with notification of the claims against him, the landlord's evidence and this hearing. Therefore, I dismiss the landlord's monetary claims against the tenant 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: February 15, 2017

Residential Tenancy Branch