



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities, a monetary Order for unpaid rent or utilities, and to retain all or part of the security deposit. At the hearing the Landlord withdrew the application for an Order of Possession, as the rental unit was vacated on February 16, 2017

The Landlord stated that on February 06, 2017 the Application for Dispute Resolution, the Notice of Hearing and the Ten Day Notice to End Tenancy were posted on the door of the rental unit. The Landlord stated that two copies of these documents were posted on the door; one of each Tenant.

On November February 27, 2017 the Landlord submitted 21 pages of evidence to the Residential Tenancy Branch. The Landlord stated that these documents were not served to the Tenants, as they did not have a forwarding address for them. As these documents were not served to the Tenants, they were not accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to a monetary Order for unpaid rent and to keep all or part of the security deposit?

Background and Evidence

The Landlord stated that the Tenants still owe \$3,600.00 in rent.

Analysis

The purpose of serving the Application for Dispute Resolution and the Notice of Hearing to tenants is to notify them that a dispute resolution proceeding has been initiated and to give them the opportunity to respond to the claims being made by the landlord. When a landlord files an Application for Dispute Resolution in which the landlord has applied for a monetary Order, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution in compliance with section 89(1) of the *Residential Tenancy Act (Act)*.

Section 89(1) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution in one of the following ways:

- (a) by leaving a copy with the person;
- (c) by sending a copy by registered mail to the address at which the person resides;
- (d) by sending a copy by registered mail to a forwarding address provided by the tenant;
or
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

The Landlord submitted no evidence to show that the Tenants were personally served with the Application for Dispute Resolution or Notice of Hearing and I therefore find that they were not served in accordance with section 89(1)(a) of the *Act*.

The Landlord submitted no evidence that the Application for Dispute Resolution was mailed to the Tenants and I cannot, therefore, conclude that they were served in accordance with section 89(1)(c) or 89(1)(d) of the *Act*.

There is no evidence that the director authorized the Landlord to serve the Application for Dispute Resolution to the Tenants in an alternate manner, therefore I find that they were not served in accordance with section 89(1)(e) of the *Act*.

The Landlord submitted no evidence to cause me to conclude that the Tenants received the Application for Dispute Resolution, therefore I cannot conclude that the Application has been sufficiently served pursuant to sections 71(2)(b) or 71(2)(c) of the *Act*.

As the Landlord has failed to establish that the Application for Dispute Resolution was served to the Tenants in accordance with section 89(1) of the *Act*, I am unable to proceed with the Landlord's application for a monetary Order. The application for a monetary Order is therefore dismissed, with leave to reapply.

Conclusion

The application for an Order of Possession has been withdrawn. The application for a monetary Order is dismissed, 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 *Act*.

Dated: March 07, 2017

Residential Tenancy Branch

