



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MND O

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("the Act") for: an Order of Possession for Unpaid Rent pursuant to section 55; a monetary order for unpaid rent and damage to the rental unit pursuant to section 67; 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 the teleconference hearing line remained open until 11:24 am in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 am. The landlords both attended the hearing and were given a full opportunity to be heard, to present testimony, and to make submissions.

Preliminary Matter: Proof of service

Landlord HA testified that she served the tenant with the landlord's 10 Day Notice of Hearing on April 5, 2017 by posting it on his door. She testified that he was in the rental unit at that time, that he had looked out the window and that she told him she had placed the Notice to End Tenancy on the door. She testified that he acknowledged her, stating, "okay". I accept that the tenant was served with the 10 Day Notice in accordance with section 88 and 90 of the Act.

Landlord HA testified that she served the tenant with the landlord's Application for Dispute Resolution ("ADR") and evidentiary materials by registered mail. The landlords submitted a portion of a Canada Post receipt that did not include the date. The landlords had placed a blank Canada Post tracking form over the receipt in printing it. Therefore, the documentary evidence did not supply the date of the mailing or to whom it was mailed.

With respect to service by mail of an application for dispute resolution, section 89(1)(c) of the Act reads,

89 (1) An application for dispute resolution ..., when required to be given to one party by another, must be given ...

(c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord ...

Residential Tenancy Policy Guideline No. 12 reinforces the special rules for service of certain documents, including but not limited to an application for dispute resolution. Registered mail is an approved method of service. However, in proving service by registered mail, the policy guideline requires a party to include the original Canada Post Registered Mail receipt containing the date of service, the address of service, and provide proof that the address of service was the person's residence at the time of service, as well as a copy of the printed tracking report.

During this hearing, the landlords advised that the tenant was put in jail on approximately April 12, 2017 and that he was released on May 9, 2017. Landlord HA initially testified that the tenant was served with the landlord's ADR on April 15, 2017. I note that the tenant was, based on the testimony of the landlords, in jail at that time. However, Landlord HA then testified that it must have been on or around May 9, 2017 at which time she witnessed the tenant picking up the landlord's Application for Dispute Resolution at his mailbox but she could not be certain of the 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 respondent (in this case the tenant) does not appear at a Dispute Resolution hearing, the applicant (the landlord) must be prepared to *prove* service under oath. 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. The Notice of Dispute Resolution Hearing sent to the landlords for their own records and to serve the tenant reads in part that "deadlines are critical" and that evidence processing instructions are included in the materials sent to the parties in a dispute.

It is essential that a party be able to **prove** that they have **sufficiently** served the documents for a Residential Tenancy Dispute Resolution hearing. Prior to considering the details of the landlord/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 have a choice to attend the dispute resolution hearing.

The landlords were unable to set out the dates that they served the tenant or provide documents that would confirm the dates the tenant was served. However, based on the tenant's transiency, I find that the landlord submitted insufficient evidence to show that the tenant continues to receive mail or reside in any manner at the rental premises at the time the materials were sent to him by the landlords. There was insufficient evidence to show that the landlords had served their ADR and notice of hearing in a manner that ensured the tenant was or should have been aware of this hearing. Therefore, I find that there was insufficient evidence to prove that the landlord served the tenant sufficiently to proceed with this application.

Given the lack of certainty with respect to service, I must dismiss the landlords' application.

Conclusion

The landlords' application is dismissed in its entirety 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: June 06, 2017

Residential Tenancy Branch