



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD & FF

Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession for non-payment of rent
- b. A monetary order in the sum of \$4941 for unpaid rent, utilities and the failure to clean
- c. An Order to retain the security deposit.
- d. An order to recover the cost of the filing fee

The respondent failed to contact the telephone bridge number at the appointed time for the hearing. The applicant was late checking in. I waited 10 minutes after the appointed time for the hearing and then proceeded with the hearing.

The agent for the landlord testified tenancy started on January 1, 2017. The rent was \$2100 per month payable on the 20th day of the preceding month. The tenant paid a security deposit of \$1000 prior to the start of the tenancy. The tenant vacated the rental property on April 12, 2017.

The applicant had previously applied for an order of substituted service requesting that the application be served by e-mail. In a decision dated May 5, 2017 the adjudicator dismissed the landlord's application to serve it by e-mail on the basis that the name on the e-mail address is different than that on the Application for Dispute Resolution.

The agent testified he does not know where the tenant lives and he/she failed to provide a forwarding address. He said he has served her as follows:

- The owner has sent it by e-mail to an e-mail address she has been communicating with the Tenant.
- By registered mail to where the Tenant works. However, a search of the Canada Post tracking service indicates there was an error and the address and the documents were refused.
- The tenant contacted him and requested the landlord provide her mail through a police officer. The landlord gave mail to the police officer along with a copy of the Application for Dispute Resolution/ Notice of Hearing. He testified she picked up this material from the police officer. However, he failed to provide evidence from the police officer to verify this and the police officer was not present at the hearing to testify.

Section 99(1) of the Residential Tenancy Act provides as follows:

Special rules for certain documents

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (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;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

Policy Guideline #12 includes the following:

15. PROOF OF SERVICE

Where the respondent does not appear at a dispute resolution hearing, the applicant must be prepared to prove service of the notice of hearing package.

Proof of service of other documents may be submitted in support of claims for dispute resolution in accordance with the Rules of Procedure.

Where proof of service is required, the person who actually served the documents must either:

- be available as a witness in the hearing to prove service, or
- provide a signed statement with the details of how the documents were served.

Proof of service personally should include the date and time of service, the location where service occurred, description of what was served, the name of the person who was served, and the name of the person who served the documents.

Proof of service by Registered Mail should include the original Canada Post Registered Mail receipt containing the date of service, the address of service, and that the address of service was the person's residence at the time of service, or the landlord's place of conducting business as a landlord at the time of service as well as a copy of the printed tracking report.

Analysis

After carefully considering the evidence presented by the agent for the landlord I determined the landlord failed to prove sufficient service on the Tenant. The Act requires personal service or by registered mail to where the respondent resides or to the forwarding address provided by the respondent. The respondent failed to provide a forwarding address.

- Service by e-mail is not recognized by Act as a sufficient method of serving an Application for Dispute Resolution for a monetary order. This proposed method was dismissed in a previous application for Substituted service. I determined this was method was not a sufficient form of service.
- The agent testified he sent it by registered mail to where the tenant works. He failed to provide the registered mail receipt. He provided a tracking number. When the tracking number was served on the Canada Post tracking service it indicated it the documents were refused. I determined the landlord failed to prove the respondent received the documents by registered mail.
- The agent testified he gave a copy of the documents to a police officer along with other mail and that the tenant picked up those documents from the police officer. However, the agent failed to provide first hand evidence from the police officer that indicates the respondent was served. I determined there is insufficient evidence to prove the police officer served her.

I determined the landlord failed to prove service of the Application for Dispute Resolution on the respondent. As a result I dismissed the application with liberty to re-apply. I make no findings on the merits of the matter. Liberty to reapply is not an extension of any applicable limitation period.

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 09, 2017

Residential Tenancy Branch