



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNDC FF

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 pursuant to section 67; authorization to retain all or a portion of the tenants' security deposit in satisfaction of the monetary order requested pursuant to section 38; and authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both landlords attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenants did not attend the hearing within the 18 minutes the teleconference line remained open.

Landlord SS testified that he had issued several different Notices to End Tenancy to the tenant on several dates. He provided testimony regarding service of the Notices to End Tenancy as well as the Application for Dispute Resolution Hearing ("ADR") with the Notice of Hearing in an unsure manner. The landlord testified that the tenant was served with notice of this hearing by posting the notice on the tenant's door. The landlord testified that he believes the tenants were still residing in the rental unit at the time that he posted the notice on their door. However, he also testified that he is not certain whether the tenants continue to reside in the rental unit. The landlord submitted copies of registered mail receipts indicating materials sent to the tenants but, despite being asked directly about those materials, the landlord was unable to confirm the nature of the delivery or any other details (including receipt) about his Dispute Resolution package for this hearing.

Preliminary Matter: Service of Documents

At the outset of the hearing, both landlords attended. Landlord SS testified that he had served the tenants with his Application for dispute resolution as well as the other evidentiary materials submitted for the hearing. The landlords both testified regarding service of documents however neither landlord provided clear or consistent testimony. The landlords both testified that their Application for Dispute Resolution (“ADR”) with Notice of Hearing was provided by posting on the door of the rental unit. However, this method of service is not sufficient to satisfy the nature of the application made by the landlords.

The landlords were both given an opportunity to explain the registered mail evidence within their materials: to confirm the dates of service and to indicate the nature of the materials served as well as whether they had verified that the items sent had been received by the tenants. The landlords testified that they did not have a written residential tenancy agreement with respect to this arrangement with the tenants. Further, they testified that they did not have copies of their notices to end tenancy. Finally, as stated, they were very unclear on the nature and date of service of documents.

Residential Tenancy Policy Guideline No. 12 sets out the ways in which one party must serve hearing materials to another party. Policy Guideline No. 12 reinforces the special rules for service of certain documents, including but not limited to an application for dispute resolution. 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 tenants) do not appear at a Dispute Resolution hearing, the applicant(s) (the landlords) 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. 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 tenant/applicant’s claim, I must be satisfied that the tenant/applicant sufficiently served the other party, allowing that party an opportunity to know the case against them and attend the dispute resolution hearing.

I find that the landlords submitted insufficient evidence to show that the landlord had served the 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 landlords served the tenants sufficiently to proceed with this application. Given the lack of certainty with respect to service, I must dismiss the landlord's application.

Conclusion

The landlord's 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: August 23, 2017

Residential Tenancy Branch