



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB OPR MNDC MNR FF

Introduction

This hearing dealt with the landlord's application pursuant to the Residential Tenancy Act ("the Act") for: an Order of Possession for Unpaid Rent (or End of Employment) pursuant to section 55; a monetary order for unpaid rent pursuant to section 67; authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; 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 I waited until 9:48 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions with respect to his application.

The landlord provided sworn, undisputed testimony that he served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") on June 26, 2017 by posting it on the rental unit door. I accept the undisputed evidence of the landlord and the copy of the 10 Day Notice submitted by the landlord. I find that the tenant was deemed served with the 10 Day Notice on June 29, 2017 in accordance with section 88 and 90 of the Act.

Preliminary Matter: Service of Application for Dispute Resolution

At this hearing, the landlord provided wavering testimony as to when he served the tenant with his Application for Dispute Resolution, including documentary evidence and Notice of Hearing sheet. The landlord made his application on July 4, 2017. He initially stated that he served the application approximately 2 weeks prior to this hearing. Later, the landlord stated that he served the application "somewhere around July 4, 2017" by posting it on the rental unit door.

In his testimony, the landlord stated that he was not certain whether the tenant continues to reside in the rental unit but believes that the tenant's belongings are still in the residence. While I asked the landlord several times to provide a date that the Application for Dispute Resolution ("ADR") and Notice of Hearing were served to the tenant, he was unable to provide an exact date. The landlord did not submit any documentary evidence that could assist in her recall with respect to the service of the documents to notify the tenant of his application and this hearing.

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. Beyond

proper service, it is also 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 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 attend the dispute resolution hearing. Residential Tenancy Policy Guideline No. 12, in considering the terms of service at section 88 to 90 in the *Act*, states that when the respondent (in this case the tenant) does not attend a Dispute Resolution hearing, the applicant (in this case the landlord) must be prepared to prove service under oath. I find that the landlord was unable to prove service as he was uncertain as to the details of service, particularly the date on which it was served.

Given that the landlord seems uncertain as to whether the tenant continues to reside in the rental unit and that the landlord was unable to provide the date upon which he served the notice of hearing, I cannot be certain that the tenant was aware of this hearing. Furthermore, given that the landlord could not identify the date of service, I am unable to determine when the tenant might have been served or deemed served with the materials for this hearing. As the Application for Dispute Resolution must be served within a particular timeline and as I am unable to determine if the landlord met that timeline, I find that the landlord was unable to prove that the tenant was served with the dispute resolution documents and that he served them in accordance with the *Act*. I am unable to determine whether the tenant was aware of this dispute resolution hearing. Therefore, I must dismiss the landlord's application for an Order of Possession and a monetary order, as well as his application to recover the filing fee.

Conclusion

I dismiss the landlord's application with leave to reapply. Any applicable timelines for this application will still apply.

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: September 15, 2017

Residential Tenancy Branch