



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR O FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for a monetary order for unpaid rent pursuant to section 67, any other remedy under the Act and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord attended this hearing in support of his application. While he testified that he submitted a copy of the residential tenancy agreement for this hearing, I could find no documentary evidence on file as evidence for the landlord. The landlord remained on the 1:30 p.m. teleconference call until 1:52 p.m. He was given an opportunity to make submissions and testify in support of his application.

The landlord testified that he served his Application for Dispute Resolution ("ADR") with Notice of Hearing to the tenant on August 25, 2017. He testified that he served his ADR by registered mail to the tenant's workplace. The landlord did not submit a receipt or evidence of his registered mailing however he provided the Canada Post tracking number for the mailing which confirmed the date that the mailing was sent and that the package had been signed for. However, the person who signed for the package was not the tenant. The landlord testified that it was likely a receptionist at the place where the tenant works.

Preliminary Matter: Service of Documents

Proper service of documents is essential to the Residential Tenancy Dispute Resolution process to notify the respondent of the application, the hearing date and time as well as the information related to the application. 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.

Residential Tenancy Policy Guideline No. 12, in considering the terms of service at section 88 to 90 in the *Act* states that, when the respondents do not appear at a Dispute Resolution hearing, the applicants must be prepared to **prove service under oath**. According to section 89, the landlord's Application for Dispute Resolution must be served to the tenant in one of the following ways,

- 89(1)** An application for dispute resolution ... 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;
 - ...
 - (c) by sending a copy by registered mail to the address at which the person resides ...
 - (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*].

Prior to considering the substantive details of the (landlord) applicant's claim, I must be satisfied that the respondent (tenant) was sufficiently served with the landlord's hearing package, allowing the tenant an opportunity to know the case against them and attend the dispute resolution hearing. The landlord indicated that he had not been provided with an address of residence or a forwarding address by the tenant when the tenant vacated the rental unit. Furthermore, while the landlord had a telephone number for the tenant, he had been unable to reach the tenant. The landlord testified that he had been unsuccessful at trying to serve the tenant in person. The landlord also confirmed that he had not made an application for substituted service (pursuant to section 89(1)(e) as described above.

Based on the landlord's lack of service by any of the methods provided under section 89 and described in the landlord's information package on his application, I find that the landlord has not sufficiently served the tenant with his ADR package for this hearing. As the landlord did not make an application for subservice prior to this hearing and the landlord did not submit documentary evidence to support an application for subservice, I cannot proceed to hear the landlord's application.

As stated, I find that the landlord has not sufficiently proven that the tenant was in fact served sufficiently and/or served in accordance with the *Act*. Therefore, I am unable to assess whether the tenant is aware of the application for a monetary award against him and the details of this dispute resolution hearing. Therefore, I dismiss the landlords' application with leave to reapply.

Conclusion

I dismiss the landlords' application 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: February 26, 2018

Residential Tenancy Branch