



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR, LAT, LRE, OLC

Introduction:

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the 10 day Notice to End Tenancy dated January 28, 2018
- b. An order authorizing the tenant to change the locks
- c. An order that the landlord comply with the Act, Regulations and/or tenancy agreement.
- d. An order to suspend or set conditions on the landlord's right to enter the rental unit.

The Application for Dispute Resolution filed by the Landlord seeks the following:

- a. An Order of Possession
- b. A monetary order in the sum of \$
- c. An order to retain the security deposit.
- d. An order to recover the cost of the filing fee.

Tenant's Application:

The Tenant failed to contact the telephone bridge number at the scheduled time for the hearing. A representative of the landlord was presented and ready to proceed. The telephone line remained open while the phone system was monitored for ten minutes. The Tenant failed to appear. I then proceeded with the hearing in the absence of the applicant.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The representative of the landlord testified it appears the tenant has abandoned the rental unit. As the Tenant failed to appear **I ordered that the application be dismissed without leave to re-apply.** The representative of the landlord stated it was not necessary to issue an Order of Possession.

Landlord's Application:

The Residential Tenancy Act provides where a party wishes to make a monetary claim the applicant must serve the Application for Dispute Resolution and Notice of Resolution on the respondent in person or by registered mail to where the respondent resides.

The representative of the landlord testified that she did not personally serve the Tenant. However, she stated her father must have served him. Her father is presently out of the country. She went through the materials her father had prepared and she testified there is a text from her father to the tenant saying he had left a package on the front door. She then stated the package may have been the eviction notice.

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.

Proof of service personally on an adult who apparently resides with the tenant should include:

- either an acknowledgment of 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 as well as confirmation that the person is an adult; or,
- witness confirmation of service on the adult including 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 as well as a description of how the witness knows the person served is an adult who apparently resides with the tenant.

Failure to prove service may result in the matter being dismissed, with or without leave to reapply. Adjournments to prove service are given only in unusual circumstances.

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Analysis:

I determined the landlord failed to prove the respondent has been sufficiently served in accordance with the Residential Tenancy Act with the landlord's Application for Dispute Resolution and Notice of Dispute Resolution Hearing. The representative of the landlord acknowledged she did not personally serve the respondent. There is no evidence in the form of a registered mail receipt that the landlord served the respondent by registered mail. The representative of the landlord was not able to provide evidence that the respondent acknowledged receipt of the landlord's application. Unusual circumstances which might warrant the granting of an adjournment do not exist in this situation. While it is unclear it may be that the landlord attempted to serve the tenant by posting it on his front door. If this was the case this is an insufficient form of service for the purpose of obtaining a monetary order.

As a result I determined that the landlord's application must be dismissed with liberty to re-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: March 28, 2018

Residential Tenancy Branch