



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD

Introduction

This hearing was scheduled to deal with a landlord's application that was filed on February 8, 2018 for an Order of Possession and Monetary Order for unpaid rent. The landlord appeared at the hearing, along with an interpreter; however, there was no appearance by either of the named tenants.

Where a respondent does not appear at the hearing, the applicant bears the burden to prove the respondent was served with the hearing documents in a manner that complies with the Act.

Section 89 of the Act provides for the ways a landlord must serve an Application for Dispute Resolution. Below, I have reproduced section 89, in part, for the parties' reference:

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]*.

(2) An application by a landlord under section 55 *[order of possession for the landlord]*, 56 *[application for order ending tenancy early]* or 56.1 *[order of possession: tenancy frustrated]* must be given to the tenant in one of the following ways:

(a) by leaving a copy with the tenant;

(b) by sending a copy by registered mail to the address at which the tenant resides;

(c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;

(d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;

(e) as ordered by the director under section 71

(1) *[director's orders: delivery and service of documents]*.

Section 59(3) provides that an Application for Dispute Resolution must be served upon the respondent within three days of the Application for Dispute Resolution being made. Section 59(3) states, in part:

(3) ... a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.

Information with respect to how and when to serve hearing documents is provided in the Dispute Resolution Fact Sheet that is provided to applicants along with the hearing package generated by the Residential Tenancy Branch. It is upon the applicant to read the information provided to them so that the service is affected and the hearing may proceed.

The landlord testified that he gave the hearing package to each of the tenants, in person, at the rental unit on March 28, 2018. The landlord pointed to the signature of one of the tenants on one of the hearing documents with a date of March 28, 2018 written below the signature.

Since the landlords filed their Application for Dispute Resolution on February 8, 2018 the delivery of the hearing documents on March 28, 2018 was well beyond the three day time limit. I asked the landlord to provide the reason for the delay in serving the tenants. The landlord

stated that he went to the rental unit a couple of times after February 8, 2018 in an effort to meet with the tenants in person but they did not answer the door until March 28, 2018. The landlord stated he was unaware that he could have served the hearing documents by posting on the rental unit door or sending them to the tenants via registered mail.

The landlord was asked to describe what transpired on March 28, 2018. The landlord testified that on March 28, 2018 the landlord collected \$950.00 in cash from the tenants and the tenants promised that in the months that followed they would pay that month's rent plus one-half of a month's rent to catch up on the rental arrears; however, no further repayment has been received to date. The landlord did not issue a receipt to the tenants; the repayment plan was not recorded in writing. The landlord indicated that he was uncertain as to what date the tenants would be making the next payment; however, he also stated that the tenants often pay in the second or third week of the month.

I found it unclear as to whether the parties entered into a repayment plan and the tenancy was reinstated. Given this uncertainty and the landlord's failure to serve the Application for Dispute Resolution within the time limit required under section 59, I declined to further consider this Application for Dispute Resolution. I dismissed the landlords' application with leave to reapply.

The landlord was informed that the landlord remains at liberty to issue another 10 Day Notice to the tenants and make another Application for Dispute Resolution if the tenants fail to pay the outstanding rent within five days of receiving the 10 Day Notice. As for ways to serve a 10 Day Notice, I refer the parties to section 88 of the Act.

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: April 12, 2018

Residential Tenancy Branch