



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR

Introduction

This hearing dealt with an application by the landlord under the Residential Tenancy Act (the *Act*) for the following:

- An order for possession pursuant to section 46 and 55 pursuant to the landlord's Ten Day Notice to End Tenancy for Unpaid Rent or Utilities ("Ten-Day Notice").

The landlord GL appeared with his son and representative GL ("the landlord"). The tenant appeared with his advocate JA ("the tenant"). Each party was given the opportunity to provide affirmed testimony, submit written evidence, and examine the other party.

Preliminary Issue – Service of Landlord's Notice of Hearing Documents

At the outset, the tenant stated the landlord did not serve him with the Application for Dispute Resolution or the Notice of Hearing. The tenant testified he learned of the hearing when he called the RTB to ask for information regarding his Application for Dispute Resolution against the landlord scheduled for hearing on January 14, 2019 under a file number that is referenced on the first page of this Decision.

The landlord testified that he served the tenant with the Application for Dispute Resolution and Notice of Hearing by attaching the documents to the tenant's door on November 26, 2018. The landlord submitted a signed and witnessed Proof of Service form.

Section 89 of the *Act* sets out "special rules" for the service of certain documents. Section 89(1) of the *Act* requires that an applicant serve a notice of hearing to the other

party in person, by registered mail, or as ordered by the Residential Tenancy Branch director.

Section 89(2) of the *Act* allows for an exception to the above-noted rules when a landlord is serving a tenant with a notice of hearing solely for an order of possession. In such cases, the landlord may also serve the notice to the tenant by attaching it to the tenant's door or other conspicuous place at the address where the tenant resides, in addition to the permissible methods listed in section 89(1) of the *Act*. Section 90(c) of the *Act* provides that the party is deemed to have received the document three days after attachment to the door.

The tenant stated he was admitted to the hospital on January 28, 2018 and was released on December 24, 2018, a hospitalization period of eleven and a half months. He stated he is currently not residing in the unit because of maintenance and repair issues which are subject of the previously mentioned hearing scheduled for January 14, 2019 in which the tenant is the applicant. He stated he has not resided in the unit since January 28, 2018 and did not receive any documents the landlord attached to the door of the unit.

The tenant testified the landlord's son came to the hospital during his hospitalization to collect rent each month; this continued until October 1, 2018 when the landlord stopped collecting rent because the landlord's son had moved away. The tenant claimed the landlord knew the tenant was not residing in the unit due to his medical condition and was residing in the hospital. The landlord's son GL acknowledged he had picked up the rent each month from the tenant at the hospital but had stopped on October 1, 2018 because he had gone to school elsewhere; the landlord stated it was the tenant's unspoken obligation to deliver the rent to the landlord himself after that.

As the tenant attended the hearing and testified, there is no dispute that the tenant learned of the hearing and obtained teleconference access codes prior to the hearing. However, the tenant stated he learned of the hearing the week before it was scheduled and that because of his medical condition, he was not able to obtain a copy of the documents or prepare his case adequately for the hearing.

Residential Policy Guideline 12. Service Provisions provides guidance on determining deemed receipt, as follows:

A party wishing to rebut a deemed receipt presumption should provide to the arbitrator clear evidence that the document was not received or evidence of the

actual date the document was received...It is for the arbitrator to decide whether the document has been sufficiently served, and the date on which it was served.

The decision whether to make an order that a document has been sufficiently served in accordance with the Legislation or that a document not served in accordance with the Legislation is sufficiently given or served for the purposes of the Legislation is a decision for the arbitrator to make on the basis of all the evidence before them.

I find the tenant was not residing in the unit when the landlord attached the Application for Dispute Resolution and Notice of Hearing to the tenant's door on November 26, 2018. I find the landlord knew the tenant was in the hospital and had been since January of 2018. I find the landlord knew where the tenant was, that is, in the hospital, and could have served the tenant other than by posting the documents to his door. I find the tenant has rebutted the deemed receipt presumption on the basis that he did not have access to the unit because he was hospitalized.

The tenant acknowledged learning of the hearing approximately one week ago and obtaining the time, date and access codes for this hearing. The tenant testified he is unwell and did not have adequate opportunity to prepare for the hearing.

Section 71(1) of the *Act* authorizes the RTB Director to make any of the following orders:

- (a) that a document must be served in a manner the director considers necessary, despite sections 88 [*how to give or serve documents generally*] and 89 [*special rules for certain documents*];
- (b) that a document has been sufficiently served for the purposes of this *Act* on a date the director specifies;
- (c) that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this *Act*.

I have considered whether the tenant was "sufficiently served" under section 71. Considering all of the testimony, I find, pursuant to my authority under section 71(1)(b) of the *Act*, that the tenant was not sufficiently served with the documents.

Considering the testimony of the parties and the evidence submitted, I find the landlord failed to establish that the tenant was served with the Application for Dispute Resolution and Notice of Hearing according to sections 89 and 90. I therefore dismiss the landlord's application with leave to reapply.

Conclusion

This application is dismissed 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: January 12, 2019

Residential Tenancy Branch