



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes OPR-DR

Introduction

This hearing was scheduled pursuant to the *Residential Tenancy Act* (the Act) in response to a successful application filed by the tenant for review of a decision dated December 16, 2018. In the original decision, issued via a Direct Request Proceeding, the landlord was granted an order of possession for unpaid rent. The original decision and order were subsequently suspended pending the outcome of this review hearing.

Both named parties attended this review hearing by conference call.

Issues

Should the original decision and order dated December 16, 2018 be confirmed, varied or set aside?

Evidence & Analysis

In the Review Consideration Decision, the tenant was provided instructions to serve on the landlord a copy of the Review Consideration Decision and the accompanying Notice of Review Hearing within three days of receiving the decision. The Review Consideration Decision and the Notice of Review Hearing were sent to the tenant by the Residential Tenancy Branch (the "Branch") by e-mail dated December 24, 2018. On this same day, a copy of only the Review Consideration Decision was also e-mailed by the Branch to the landlord as a courtesy. The tenant confirmed in the hearing that he received the decision and notice of hearing from the Branch a few days later on December 27th or December 28th, 2018.

The tenant testified that he served the landlord with the Review Consideration Decision and Notice of Review Hearing in the second week of January 2019. The tenant testified that he served the package personally in a sealed envelope to a lady at the landlord's office address. The tenant did not know the name of the person to whom it was served.

The tenant later clarified that he believes it was served on January 14th or January 15th, 2019. The tenant testified that he also sent a copy via an e-mail attachment to another agent of the landlord who works on the outreach side of the business.

The landlord testified that a copy of the Review Consideration Decision and Notice of Review Hearing was not served on the landlord or any agent of the landlord. The landlord testified that she only became aware of the hearing date and time through contact with the Branch. The landlord testified that she only received a copy of the Review Consideration Decision but was not sure where she got it from but believes it was from the Branch.

The tenant could not provide any explanation as to why he waited until January 14th or January 15th, 2019 in order to serve the Review Consideration Decision and Notice of Review Hearing which he acknowledged receiving on December 27th or December 28th, 2018. The tenant repeatedly claimed that he was not served any evidence by the landlord which they relied upon to obtain the original decision. The tenant insisted that he served the Notice of Hearing by e-mail and stated that he was under the impression that the Branch would send both parties a copy of the Notice.

Section 89 of the *Act* establishes the following special rules for methods of service for certain documents, which include a decision of the director to proceed with a review:

- (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 document]...*

The onus to prove a document has been served is on the person who is required to serve the document. I find the tenant has not provided sufficient evidence that the landlord was served with a copy of the Review Consideration Decision and the accompanying Notice of Review Hearing in a manner required by section 89(1) of the *Act*. E-mail is not a valid method of service under section 89 of the *Act* nor has the tenant provided sufficient evidence to support that this e-mail was received by the landlord. I also find there is insufficient evidence to support a finding that the landlord was served in person on January 14th or January 15th as claimed by the tenant. The

tenant's testimony with respect to service lacked details with respect to who was served and the tenant appeared unsure of the exact date and/or time of service. The tenant also did not submit any corroborating witness testimony or statement in support of service. Further, even if I were to find the tenant did serve the landlord, which I do not, according to the tenant's own submission, he did not serve these documents until well over the 3 day requirement from the date he received the review decision. The tenant was not able to provide any explanation as to why he waited approximately 17 days to serve the documents.

Pursuant to section 81(c) of the Act, the director may dismiss or refuse to consider an application for review if the applicant fails to pursue the application diligently or does not follow an order made in the course of the review.

I find the tenant has not served the landlord with a copy of the Review Consideration Decision and Notice of Review Hearing in accordance with the Act and in accordance with the instructions contained in the review consideration decision.

I dismiss the tenant's application for review.

Conclusion

The tenant's application for review is dismissed and I confirm the original decision and Order dated December 16, 2018.

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 04, 2019

Residential Tenancy Branch