



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GWG HOLDINGS CALGARY
INC. and [tenant name suppressed to protect privacy]

REVIEW HEARING DECISION

Dispute Codes ET

Introduction

This Review Hearing dealt with a landlord's application pursuant to section 56 of the Residential Tenancy Act for an early end to this tenancy and an Order of Possession.

The tenants attended the Review Hearing, which lasted approximately 20 minutes, and were given a full opportunity to be present affirmed testimony, make submissions, call witnesses and submit evidence.

The landlord did not attend the hearing. The teleconference line remained open for the duration of the hearing and the Notice of Reconvened Hearing was confirmed to contain the correct hearing information.

Issue(s) to be Decided

Should the decision of May 28, 2019 be affirmed, varied or set aside and replaced with a new decision?

Background and Evidence

The original hearing was held on May 28, 2019. The landlord attended the original hearing. The tenants did not attend. The landlord was issued an Order of Possession.

The tenants applied for a review of the May 28, 2019 decision. In their Review Consideration Application the tenants submitted that they were unable to attend the original hearing as they were not served with the Notice of Hearing by the landlord. In the Review Consideration decision dated June 1, 2019 the presiding arbitrator

suspended the decision and order of May 28, 2019 and ordered that a new hearing be convened.

In the Review Consideration decision the arbitrator writes:

Notices of the time and date of the new hearing are included with this review consideration decision for the TENANTS to serve to the LANDLORD within three (3) days of receipt of this review consideration decision.

The tenants testified that the Review Consideration Decision was served on the landlord by registered mail sent on June 5, 2019. The tenants provided a valid Canada Post tracking number, and photograph of the registered mail receipt as evidence of service.

Analysis

Section 89(1) provides the manners by which a decision to proceed with a review may be given to one party by another. Sending a copy by registered mail to the address at which a landlord resides or carries on business is an acceptable manner of service under the Act.

I accept the evidence of the tenants that they served the Review Consideration Decision and Notice of Reconvened Hearing by registered mail sent to the service address provided by the landlord. Based on the evidence I find that the landlord is deemed served with the Notice of Hearing and materials on June 10, 2019, five days after mailing, in accordance with sections 88, 89 and 90 of the Act.

The tenants testified that they were not served with the landlord's initial application or any of the landlord's evidence. In the absence of the landlord to present evidence regarding service of the application and materials on the tenants, I find that there is insufficient evidence that the tenants were served in accordance with the Act or at all.

I find, based on the paucity of evidence, that I am not satisfied that the tenants were served with the landlord's application or evidence. As I am unable to find that the tenants have been served with the landlord's application, I find it appropriate to set aside the decision of May 28, 2019 and replace it with the finding that the landlord has failed to meet their evidentiary onus to show that the tenants were served with the application and materials. Accordingly, I dismiss the landlord's application without leave to reapply.

Conclusion

The decision and order of May 28, 2019 are set aside and replaced with this decision.

The landlord's application is dismissed without leave to reapply. This tenancy continues until ended in accordance with 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: July 11, 2019

Residential Tenancy Branch