



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNRL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on June 25, 2019 (the “Application”). The Landlord sought to recover unpaid rent and reimbursement for the filing fee.

The Landlord filed an Amendment changing the postal code for the Tenant.

The Landlord appeared at the hearing. Nobody attended for the Tenant. I explained the hearing process to the Landlord who did not have questions when asked. The Landlord provided affirmed testimony.

The Landlord submitted documentation prior to the hearing. The Tenant did not. I addressed service of the hearing package and Landlord’s documentation.

The Landlord testified that the hearing package, amendment and documentation were served on the Tenant through her lawyer who hired someone to serve the Tenant. She testified that the person did serve the Tenant in person on June 27, 2019.

I confirmed with the Landlord that she was referring to a process server. I asked the Landlord how she was aware of this information and she said through her lawyer. I asked the Landlord why she had not submitted any evidence of service to support her testimony, the Landlord said she did not know and that her lawyer was dealing with this. She said she thought her lawyer had sent the papers.

Rule 3.5 of the Rules of Procedure (the “Rules”) states:

3.5 Proof of service required at the dispute resolution hearing

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

If the Tenant was served by a process server, there would have been documentation of this such as an Affidavit of Service. Yet, the Landlord submitted no evidence to support her testimony about service. Although the Landlord’s testimony is undisputed, I do not find it sufficient in the circumstances. The Landlord does not have personal knowledge of service as she did not serve the Tenant or witness the Tenant being served. The Landlord is only aware of service through her lawyer. The testimony provided is third hand information. I do not find it sufficiently reliable in the absence of some evidence to support it. It would have been simple for the Landlord to produce such evidence because, as stated, a process server would have produced documentation of service.

There is no evidence before me showing the Tenant received the hearing package, amendment and Landlord’s documentation such as correspondence from the Tenant acknowledging receipt. The Tenant did not submit evidence for the hearing which may have satisfied me that he received the hearing package. The Tenant did not appear at the hearing to confirm service.

In the circumstances, I am not satisfied based on the evidence provided that the Tenant was served with the hearing package, amendment and Landlord’s documentation as required by section 59(3) of the *Residential Tenancy Act* (the “Act”) and rule 3.1 of the Rules.

Given I am not satisfied of service, I dismiss the Application with leave to re-apply. This does not extend any time limits set out in the Act.

Conclusion

The Application is dismissed with leave to re-apply. This does not extend any time limits set out in 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 *Act*.

Dated: October 07, 2019

Residential Tenancy Branch