



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL OPR

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55 of the *Act*; and
- a Monetary Order for unpaid rent, pursuant to section 67 of the *Act*.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:45 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord attended and was given an opportunity to present sworn testimony. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

Preliminary Issue – Amendment to Landlord's Application for Dispute Resolution

At the outset of the hearing, the landlord confirmed that the tenant had vacated the rental unit on September 30, 2019, therefore the landlord had already regained possession of the rental unit and no longer required an Order of Possession. As such, I amended the landlord's Application to dismiss the request for an Order of Possession.

Preliminary Issue – Service of the Landlord’s Application for Dispute Resolution

As the tenant did not attend the hearing, I asked the landlord to confirm that the tenant had been served with the Notice of Dispute Resolution Proceeding for this hearing, which contains the landlord’s Application for Dispute Resolution. The landlord testified that she personally served the tenant with the Notice of Dispute Resolution Proceeding but could not recall the specific date of service.

Where a respondent is not at the hearing, the applicant bears the burden to prove the respondent was served with notification of the hearing and the claims against them.

In this matter, the landlord, as the applicant, has the burden of proving service, as explained in Part 15 of Policy Guideline 12, as follows, in part:

Where the respondent does not appear at a dispute resolution hearing, the applicant must be prepared to prove service of the notice of hearing package.

...

Where proof of service is required, the person who actually served the documents must either:

- be available as a witness in the hearing to prove service, or*
- provide a signed statement with the details of how the documents were served.*

*Proof of service personally should include the **date and time of service**, the location where service occurred, description of what was served, the name of the person who was served, and the name of the person who served the documents.*

...

Failure to prove service may result in the matter being dismissed, with or without leave to reapply...

[My emphasis added]

In this case, I find that the landlord failed to establish that the tenant was served with notification of this proceeding as the landlord was unable to provide the **date and time** of service of the Notice of Dispute Resolution Proceeding package. Therefore, I order this application dismissed, and grant the landlord liberty to reapply. I make no findings on the merits of the matter. The issuance of this decision with leave to reapply does not extend any applicable time limits under the *Act*.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent?

Conclusion

The landlord's application for a Monetary Order was dismissed with leave to reapply due to an issue with service of documents.

The landlord's application for an Order of Possession was dismissed without leave to reapply as the tenant had already vacated the rental unit.

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: November 29, 2019

Residential Tenancy Branch