



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ATIRA PROPERTY MANAGEMENT INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPRM-DR, MNR

Introduction

This hearing was initiated by way of a Direct Request Proceeding. That application was considered on November 14, 2019. The Adjudicator considering that matter determined that the matter should be reconvened and considered at a participatory hearing.

The reconvened hearing was convened to consider the Landlord's Application for Dispute Resolution, in which the Landlord has applied for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on November 01, 2019 the original Dispute Resolution Package was sent to the Tenant, via registered mail, at the service address noted on the Application. A Proof of Service and associated Canada Post documentation was submitted that corroborates this testimony. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*.

Issue(s) to be Decided

Is the Landlord is entitled to an Order of Possession for unpaid rent and to a monetary Order for unpaid rent?

Background and Evidence

In an interim decision dated November 14, 2019, the Landlord was directed to serve an attached Notice of Reconvened Hearing and other documents to the Tenant, in accordance with section 89 of the *Act*.

The Agent for the Landlord initially stated that the Notice of Reconvened Hearing for the hearing today was posted on the door of the rental unit on June 10, 2019.

The Agent for the Landlord subsequently stated that the Notice of Reconvened Hearing for the hearing today was sent to the Tenant, by registered mail, although she cannot recall the date of service. She stated that she cannot recall the date of service as she does not have a copy of the Canada Post receipt or a Proof of Service with her at this time. As she does not have the Canada Post receipt with her, she was unable to cite a Canada Post tracking number.

The Agent for the Landlord stated that the Landlord submitted a Proof of Service of Notice of this hearing to the Residential Tenancy Branch on an unknown date in November of 2019.

Residential Tenancy Branch records show that the Landlord submitted a Proof of Service of Direct Request Proceeding and a Canada Post receipt to the Residential Tenancy Branch on November 13, 2019. The Proof of Service indicates the Direct Request Proceeding documents were served to the to the Tenant on November 01, 2019, via registered mail.

The Residential Tenancy Branch has no record of the Landlord submitting a proof of service of the Notice of this hearing.

Analysis

The purpose of serving the Notice of Reconvened Hearing to Tenant was to notify the Tenant that a dispute resolution hearing had been scheduled and to give the Tenant the opportunity to attend the hearing.

When a landlord files an Application for Dispute Resolution in which the landlord has applied for a monetary Order, the landlord has the burden of proving that the tenant was

served with the Application for Dispute Resolution in compliance with section 89(1) of the *Residential Tenancy Act (Act)*.

Section 89(1) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution in one of the following ways:

- (a) by leaving a copy with the person;
- (c) by sending a copy by registered mail to the address at which the person resides;
- (d) by sending a copy by registered mail to a forwarding address provided by the tenant; or
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

When a landlord files an Application for Dispute Resolution in which the landlord has applied for an Order of Possession, the landlord has the burden of proving that the tenant was served with the Notice of Reconvened Hearing in compliance with section 89(2) of the *Act*.

Section 89(2) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution in one of the following ways:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by registered mail to the address at which the tenant resides;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides; or
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

The Landlord submitted no evidence to show that the Tenant was personally served with the Notice of Reconvened Hearing and I therefore cannot conclude that the Tenant was served in accordance with section 89(1)(a) or 89(2)(a) of the *Act*.

I find that the Landlord submitted insufficient evidence to establish that the Notice of Reconvened Hearing was mailed to the Tenant and I cannot, therefore, conclude that the Tenant was served in accordance with section 89(1)(c), 89(1)(d) or 89(2)(a) of the *Act*.

In determining that there was insufficient evidence to establish that the Notice of Reconvened Hearing was mailed to the Tenant, I was heavily influenced by the absence of any documentary evidence to corroborate the Agent for the Landlord's testimony that the document was sent by registered mail. When documents are sent by registered mail, the best proof of service would be documentary evidence from Canada Post that shows a package was mailed to the other party.

In circumstances where Canada Post documentation has not been submitted in evidence, I am sometimes able to conclude that the documents have been served if the party serving the evidence can cite a Canada Post tracking number to corroborate their testimony that the evidence was mailed. In these circumstances, the Agent for the Landlord was unable to cite a tracking number.

In determining that there was insufficient evidence to establish that the Notice of Reconvened Hearing was mailed to the Tenant, I was further influenced by the Agent for the Landlord's inability to recall when the document was mailed. I find that her inability to recall this important detail reduces the credibility of her testimony.

In determining that there was insufficient evidence to establish that the Notice of Reconvened Hearing was mailed to the Tenant, I was further influenced by the fact the Agent for the Landlord initially testified the document was posted in June of 2019. I find this inconsistency in her testimony reduces the credibility of her testimony.

In view of the reduced credibility of the testimony of the Agent for the Landlord and the lack corroborating evidence, I am simply not satisfied the Notice of Reconvened Hearing was mailed to the Tenant.

The Landlord submitted no evidence to show that the Notice of Reconvened Hearing was left with an adult at the Tenant's residence and I therefore cannot conclude that she was served in accordance with section 89(2)(c) of the *Act*.

The Landlord submitted no evidence to show that the Notice of Reconvened Hearing was posted at the Tenant's residence and I therefore cannot conclude that she was served in accordance with section 89(2)(d) of the *Act*.

There is no evidence that the director authorized the Landlord to serve the Notice of Reconvened Hearing to the Tenant in an alternate manner and I cannot, therefore

conclude that the Tenant was served in accordance with section 89(1)(e) or 89(2)(e) of the *Act*.

The Landlord submitted no evidence to cause me to conclude that the Tenant received the Notice of Reconvened Hearing and I cannot, therefore, conclude that the Notice has been sufficiently served pursuant to sections 71(2)(b) or 71(2)(c) of the *Act*.

As I am not satisfied the Notice of Reconvened Hearing was served to the Tenant, I am unable to proceed with the hearing in the absence of the Tenant. The Application for Dispute Resolution is therefore dismissed, with leave to reapply.

Conclusion

The Application for Dispute Resolution is therefore 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 07, 2020

Residential Tenancy Branch