



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Grand Union Holdings Ltd
and [tenant name suppressed to protect
privacy]

DECISION

Dispute Codes OPC

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for an Order of Possession for cause, pursuant to sections 47 and 55.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:20 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord's agent and the owner of the subject rental property attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord's agent, the owner and I were the only ones who had called into this teleconference.

Preliminary Issue- Service

The landlord's agent testified that the tenant was personally served with the landlord's application for dispute resolution on January 2, 2020 and a copy was also posted on the tenant's door on January 2, 2020. No evidence whatsoever was uploaded to the Residential Tenancy Branch website.

The landlord's agent said that he personally attended at the Residential Tenancy Branch office and hand delivered his evidence. There is no record of the landlord's agent attending at the Residential Tenancy Branch office in either the new DMS system or the old CMS system. I find that there is no evidence to support a conclusion that the landlord or their agent ever provided evidence for consideration for this hearing.

Section 89 of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution:

89(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:

- (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]...*

(2)An application by a landlord under section 55 [order of possession for the landlord], 56 [application for order ending tenancy early] or 56.1 [order of possession: tenancy frustrated] must be given to the tenant 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;*
- (e)as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].*

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

I find that the landlord did not prove, on a balance of probabilities, that the tenant was served with the landlord's application for dispute resolution as no proof of service documents were entered into evidence.

At the hearing, I advised the landlord's agent and the owner that I was dismissing the landlord's application with leave to reapply for failure to prove service. I notified the landlord's agent and the owner that if they wished to pursue this matter further, they would have to file a new application. I cautioned them to be prepared to prove service at the next hearing, as per section 89 of the *Act*.

Conclusion

I dismiss the landlord's application 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: March 02, 2020

Residential Tenancy Branch