



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: CNR, OLC, RP, PSF, RR, MNDCT
For the landlords: OPR, MNRL, FFL

Introduction, Procedural and Preliminary Matters

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The tenant applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities served by the landlord (Notice), for an order requiring the landlord to comply with the Act, the Regulations, or the tenancy agreement, an order requiring the landlord to make repairs to the rental unit, an order for a reduction in monthly rent, an order requiring the landlord to provide for services or facilities required by the Act or tenancy agreement, and for monetary compensation from the landlord.

The landlord applied for an order of possession for the rental unit pursuant to the Notice, a monetary order for unpaid rent, and for recovery of the filing fee paid for this application.

The tenant and the landlord attended the hearing and both were questioned about service of their Application for Dispute Resolution and Notice of Hearing to the other party.

The tenant said he delivered his Application and Notice of Hearing to the landlord by handing the documents to the landlord's brother. The landlord denied receiving the documents.

When questioned, the landlord said his brother rents a room in the residential property, but is not his agent and does not act for him. Further, the landlord confirmed that the only other party listed on the written tenancy agreement was his wife.

The landlord said he sent his Application and Notice of Hearing to the tenant by registered mail. The tenant denied receiving the documents.

When questioned, the landlord could not provide any details about the registered mail, such as the tracking number, address used, or date of mailing.

Analysis and Conclusion

Section 89(1) of the Act indicates the ways in which an application for dispute resolution must be given:

- (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 documents*].

In the case before me, I find that the tenant provided insufficient evidence that he served the landlord as required. Although the tenant said the landlord's brother was his agent, the landlord denied this statement and there was no other evidence before me that the landlord's brother was the landlord's agent. Disputed verbal evidence does not sufficiently meet the claimant's burden of proof that the landlord's brother was the landlord's agent.

I therefore find the tenant failed to serve his application for dispute resolution as required by the Act.

As to the landlord's application, as the landlord could not provide proof of the registered mail service and in light of the tenant's denial of receipt, I find the landlord submitted insufficient evidence that he served the tenant as required by the Act.

Both parties have a right to a fair hearing and the parties would not be aware of the hearing or case against them without having been served the Notice of a Dispute Resolution Hearing and application as required by the Act.

I therefore dismiss the tenant's and the landlord's applications, *with leave to reapply*.

Leave to reapply does not extend any applicable time limitation deadlines.

I note that the tenant said he vacated the rental unit on February 11, 2020; however, the landlord wanted to provide evidence that this was not the case.

I informed the landlord these matters can be addressed in the next hearing, should either party make a future application.

I make no findings on the merits of either application.

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 2, 2020

Residential Tenancy Branch