



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP

Introduction

This expedited hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for an order for emergency repairs pursuant to section 33. Both tenants attended the hearing and the landlord, BG also attended the hearing. As both parties were present, service of documents was confirmed.

The landlord testified that he was not served with a copy of the tenant's Notice of Dispute Resolution Proceedings. On October 20th, the landlord contacted the Residential Tenancy Branch regarding his own application for an order of possession and discovered the tenant had filed the within application. He obtained a copy of the Notice of Dispute Resolution Proceedings from the Residential Tenancy Branch on October 20th.

The tenant testified that she didn't understand she was required to serve the landlord with the Notice of Dispute Resolution Proceedings. She and the landlord "talked about" it, but acknowledges she never served the landlord with the Notice or any evidence. The landlord denies there was any conversation about today's hearing.

Preliminary Issue – service of Notice of Dispute Resolution Proceedings

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]...*

Rule 3.5 of the Residential Tenancy Branch Rules of Procedure states:

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.

The tenant clearly acknowledged she never served the landlord with the Notice of Dispute Resolution Proceedings. As this is a requirement by section 89 of the Act and Rule 3.5 of the Residential Tenancy Branch Rules of Procedure, I dismiss the tenant's application with leave to reapply.

Conclusion

This application is dismissed with leave to reapply. Leave to reapply does not extend any deadlines established pursuant to 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 *Residential Tenancy Act*.

Dated: October 27, 2020

Residential Tenancy Branch