



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR-MT

Introduction

This hearing was set for 11:00 a.m. on this date, via teleconference call, to deal with a tenant's application to cancel a Notice to End Tenancy for unpaid rent and more time to make the Application for Dispute Resolution.

The tenant appeared at the hearing; however, there was no appearance on part of the landlord.

Since the landlord did not appear, I explored service of hearing documents upon the landlord. The tenant testified that she served the landlord with the hearing documents via registered mail. The tenant did not submit a registered mail receipt and was unable to provide me with the date or tracking number for the registered mail. I asked the tenant how much time she would require to locate the registered mail receipt to which she stated she probably threw the receipt out.

I also noted that the tenant did not provide a copy of a Notice to End Tenancy which is was to be the subject of this proceeding despite her obligation to do under Rule 2.5 and 3.1 of the Rules of Procedure.

I noted that in preparing the Application for Dispute Resolution the tenant stated she was disputing the 10 Day Notice due to financial hardship and inability to move out of the rental unit within 10 days. I informed the tenant that such reasons do not form a legal basis for me to cancel a 10 Day Notice to which the tenant stated she only filed her Application for Dispute Resolution to get more time to vacate the rental unit.

Section 59 provides that an Application for Dispute Resolution must be served upon the other party within three days of making the Application for Dispute Resolution.

Where a respondent does not appear for the hearing, the applicant bears the burden to prove the respondent was duly served. Residential Tenancy Policy Guideline 12 provides that where registered mail is used for service, the party serving should provide a copy of the registered mail receipt, the date of mailing, the address for mailing and evidence the address is the respondent's service address.

In this case, I was not provided the registered mail receipt, and the tenant did not provide me with the date of mailing or registered mail tracking number orally during the hearing. I was not provided a copy of the tenancy agreement or the Notice to End Tenancy to confirm the tenant used the landlord's service address. Therefore, I find the tenant failed to prove she served the landlord with notification of this proceeding as required.

All of the above considered, I dismiss the tenant's application without leave to reapply.

In the absence of proof of service and a copy of the Notice to End Tenancy, I am unable to determine whether there is a Notice to End Tenancy that complies with the form and content requirements of section 52 of the Act was served. Therefore, I do not provide the landlord with an Order of Possession pursuant to section 55(1) of the Act. Should the landlord require an Order of Possession the landlord may file her own Landlord's Application for Dispute Resolution.

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 11, 2021

Residential Tenancy Branch