



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Narod Properties Corp.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, FFL

Introduction

This hearing originally convened as a Direct Request proceeding on March 8, 2021. The landlord was awarded an Order of Possession. The tenant applied for Review Consideration of the March 8, 2021 Decision. In a Review Consideration Decision dated March 17, 2021, an Arbitrator made the following Order:

I order that a new hearing of the original application take place. The decision and order(s) issued on March 8, 2021 are suspended until that hearing is completed. Notices of the time and date of the hearing are included with this Review Consideration Decision for the review applicant to serve to the review respondent within 3 days of receipt of this Decision. The review applicant must also serve a copy of this Decision to the other party

Tenant N.P. and the landlord's agent (the "agent") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision.

The tenant testified that on March 24, 2021 he emailed the landlord a copy of the Review Consideration Decision and Notice of Review Hearing Documents. The agent testified that the landlord was not served with the above documents. The tenant did not enter into evidence any documentation to support his testimony such as the serving

email. The agent testified that the landlord only learned of this hearing when the Residential Tenancy Branch emailed the landlord about this hearing. A May 12, 2021 entry in the Dispute Management System Notes, recorded by information officers, states:

LL VERIFIED INFORMED THE LL THE DATE AND TIME OF HEARING.
LL STATED THEY WERE NOT SERVED THE NOH BY THE TNT.

The agent testified that the tenant did not have the landlord's written authorization to serve the landlord via email. This was not disputed by the tenant.

The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

I find that the tenants have not proved, on a balance of probabilities, that the landlord was served with a copy of the Review Consideration Decision and the accompanying Notice of Review Hearing Documents via email on March 24, 2021. I find that the tenant has not proved, on a balance of probabilities, that email service was permitted under section 89(1) of the *Act*.

Pursuant to section 81 of the *Act*, the director may dismiss or refuse to consider an application for review if the applicant fails to pursue the application diligently or does not follow an order made in the course of the review.

I find the tenant has prejudiced the landlord's ability to respond or prepare for this review hearing by not serving the landlord in accordance with the *Act* and in accordance with the instructions contained in the Review Consideration Decision.

I dismiss the tenant's application for review. The March 8, 2021 Decision and Order are therefore confirmed.

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: June 22, 2021

Residential Tenancy Branch