



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction and Preliminary and Procedural Matters-

This hearing dealt with the landlords' application for dispute resolution seeking remedy under the Residential Tenancy Act (Act). The landlords applied for an order of possession of the rental unit pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) served to the respondent, a monetary order for unpaid rent, and recovery of the cost of the filing fee.

The landlords attended the hearing; however, the respondent did not attend the hearing.

The landlord submitted they served the respondent their Application for Dispute Resolution, evidence, and Notice of Hearing (application package) by registered mail and by putting the documents in the mailbox. The landlords filed the registered mail receipts showing the tracking numbers.

Thereafter the landlords provided answers regarding preliminary matters.

The landlords said they purchased the residential property from the original landlord and took ownership in February 2022. Thereafter, they received only one payment of monthly rent from the property management company representing the original landlord and then, they received no further rent. The landlords were unable to provide the date they received the one payment, either in February or March 2022.

The evidence of the landlords showed that KK was the tenant when they assumed the tenancy. The written tenancy agreement filed by the landlords show KK as the only tenant. The landlords said that KK is now deceased, having died sometime between

April 15-May 15, 2022, as far as they knew. The landlords said this information was provided to them by a local real estate agent.

The landlords submitted that the monthly rent was \$850, even though they listed the monthly rent of \$3,400 in their application and the written tenancy agreement between the property management company and KK did not list any monthly rent.

The landlords submitted that as they were not receiving the monthly rent, they served a 10 Day Notice to the respondent, SK, by personal service. The Notice, filed in evidence, listed KK as the tenant, with the word, “deceased” by the name and also listed, “other occupants”. SK was said to be the daughter of KK.

I find there was insufficient evidence from the landlords that SK, the party served with the landlord’s application, is a personal agent of the deceased, KK, administering the estate of the tenant.

I also find there is insufficient evidence to show that SK assumed the tenancy, and apart from that, KK was named as the tenant in the 10 Day Notice. For this reason, I find the landlords submitted insufficient evidence to show they properly served the correct party.

RTB Policy Guideline 43, Naming Parties (PG 43) states as follows:

D. NAMING AN ESTATE OF A PERSON WHO HAS DIED

Where a party to an Application for Dispute Resolution is deceased, the personal representative of the deceased’s estate must be named. If the deceased is a respondent to an application, the personal representative must be named and served. If the applicant does not know the name of the deceased’s personal representative at the time of filing an Application for Dispute Resolution, the deceased’s name can be filled in on the application (e.g. John Doe, deceased). At the hearing, the arbitrator may amend the application to reflect the proper name of the estate.

The personal representative may be the person named as executor in the deceased’s will, or the person who has been approved by the court to administer the estate by way of an estate grant.

The proper manner of naming the estate is as follows: John Smith, Personal Representative of the Estate of Mary Jones, Deceased.

For this reason, I am not satisfied of service of the hearing documents to the proper person as there was insufficient evidence of a personal agent for the deceased tenant.

Therefore, I **dismiss** the landlords' application **with leave to reapply** due to a service issue. I note this decision does not extend any applicable time limits under the Act. The filing fee is not granted due to a service issue.

Conclusion

The landlord's application is dismissed with leave to reapply due to a service issue.

The filing fee is not granted as noted above. This decision does not extend any applicable time limits under the Act.

The landlord is reminded to review RTB PG 43 before reapplying.

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: November 10, 2022

Residential Tenancy Branch