



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, OPR, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”), for a Monetary Order for Unpaid Rent, and for the recovery of the filing fee paid for this application.

The Landlord and a family member (the “Landlord”) were present for the teleconference hearing, as was one of the Tenants. The parties were affirmed to be truthful in their testimony.

The Tenant stated that they received the Notice of Dispute Resolution Proceeding package and copies of the Landlord’s evidence on October 24, 2018. The Landlord confirmed that the package was provided to the Tenants in person on this date. As stated by Rule 3.1 of the *Residential Tenancy Branch Rules of Procedure*, the Notice of Dispute Resolution Proceeding package must be served within three days of the date the package was made available.

The Landlord stated they were unable to pick up the package that was available on October 10, 2018 until later in the week and were unable to serve the package to the Tenants until October 24, 2018. Due to the late service of the Notice of Dispute Resolution Proceeding package, the Tenant requested that the hearing be adjourned.

However, the parties were also in dispute over service of the 10 Day Notice. As such, the hearing continued to gather more information regarding the 10 Day Notice that is the subject of the Landlord’s Application for Dispute Resolution.

Preliminary Matters

At the outset of the hearing, the Tenant stated that she did not receive the 10 Day Notice until October 24, 2018 when she received the Landlord's Notice of Dispute Resolution Proceeding package and copies of the Landlord's evidence.

The Landlord testified that the 10 Day Notice, dated September 20, 2018, was served to the Tenants in person on the same day. The Landlord did not submit any documentary evidence as proof of service for the 10 Day Notice.

Due to the conflicting testimony over service of the 10 Day Notice, I cannot determine whether the Tenants were in receipt of the 10 Day Notice on September 20, 2018. The party filing the claim has the burden of proof to establish their claim. When the parties provide conflicting testimony, it is up to the party who has the onus to submit evidence over and above their testimony to establish their claim.

As the parties were not in agreement as to service of the 10 Day Notice, and due to insufficient evidence from the Landlord to establish that it was served to the Tenants in accordance with Section 88 of the *Act*, the hearing did not continue. The parties were informed that the Landlord's application was dismissed and the hearing would no proceed.

Conclusion

The Landlord's Application for Dispute Resolution is dismissed, without leave to reapply.

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 09, 2018

Residential Tenancy Branch