



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

The landlord applies for an order of possession pursuant to a ten day Notice to End Tenancy for unpaid rent. He also seeks a monetary award for unpaid rent.

The respondent tenant did not attend the hearing within thirty minutes after its scheduled start time at 11:00 a.m. on September 10, 2019. The teleconference hearing connection remained open during that time in order to enable the parties to call into the teleconference hearing. The call-in numbers and participant codes provided in the Notice of Hearing were confirmed as correct. The teleconference system audio console confirmed that the landlord and this arbitrator were the only ones who had called into this teleconference during that period.

The landlord originally applied through the Direct Request process. In a decision dated July 12, 2019, his application was refused and the matter was referred for a hearing. In that decision the adjudicator stated:

I order that the direct request proceeding be reconvened in accordance with section 74 of the *Act*. I find that a participatory hearing to be conducted by an arbitrator appointed under the *Act* is required in order to determine the details of the landlord's application.

Notices of Reconvened Hearing are enclosed with this interim decision. The applicant must serve the Notice of Reconvened Hearing, the interim decision, and all other required documents, upon the tenant within three (3) days of receiving this decision in accordance with section 89 of the *Act*.

(emphasis in original)

Residential Tenancy Branch records show that the interim decision and Notice of Reconvened Hearing (the hearing today) were sent to the landlord by email on July 16 with specific instructions that he served the tenant by July 19.

The landlord testifies that he served the tenant with the Notice of Reconvened Hearing by registered mail (tracking number shown on cover page of this decision).

Canada Post records show that the mail was given to the post office on August 2, 2019, well outside the three day period set by s. 89 of the *Act* and as directed in the Residential Tenancy Branch email of July 16.

The tenant moved out August 5 or 6 according to the landlord.

Canada Post records show that a mail pick up card was left for the tenant at the rental unit on August 6.

While it is not uncommon for a hearing to proceed in the absence of a respondent, it is a precondition that the respondent be shown to have been properly served with notice of the application and hearing. In this case the landlord is unable to demonstrate that the tenant has been properly served.

The application is dismissed with leave for the landlord to re-apply.

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: September 10, 2019

Residential Tenancy Branch