



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: OPR, MND, MNR, MNSD, MNDC, O, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent, a Monetary Order for damages to the rental unit, unpaid rent, compensation for damage or loss under the Act, regulations or tenancy agreement, retention of the security deposit and recovery of the filing fee. The tenants did not appear at the hearing. The landlord testified that the tenants were served with the Notice of Hearing and the Landlord's Application for Dispute Resolution by registered mail sent to the rental unit address. A search of the registered mail tracking number shows that the landlord delivered the mail to Canada Post on October 16, 2008 and Canada Post attempted delivery on October 20, 2008. The registered mail was not successfully delivered to the tenants or picked up at the post office.

Issue(s) to be Decided

1. Whether the tenants were served with notice of the hearing and the landlord's application for dispute resolution within the requirements of the Act.

Background and Evidence

Initially, the landlord testified that the tenancy ended October 20, 2008. Upon further enquiry, the landlord testified that a move-out inspection was originally scheduled for October 14, 2008 and then it was set for October 15, 2008 as the tenants had not yet vacated. The landlord testified that he entered the rental unit on October 15, 2008 to conduct a move-out inspection. The tenants were not present on October 15, 2008 but

some of the tenants' belonging still remained in the rental unit. The landlord testified that he exited the rental unit and posted another notice for a move-out inspection on the rental unit door, scheduling the inspection for October 20, 2008. It was the landlord's position that the tenants were still residing in the rental unit on October 15, 2008 since the belongings left behind, including a bedroll, indicated somebody was still residing there. The landlord noted that upon returning to the rental unit on October 20, 2008 many of the same belongings were still there, except the bedroll, camera, watch, clothes and other miscellaneous items were gone. The landlord was of the position that the tenants removed these items on the weekend of October 18 and 19, 2008.

Analysis

The dispute resolution process is based upon the principles of natural justice. Natural justice requires that a respondent be informed of the nature of the claim and the monetary amount sought against them. This is one of the many purposes of the Application for Dispute Resolution and the Notice of Hearing. Accordingly, these documents must be adequately served upon the other party. Section 89 of the Act provides for the methods a party must use to serve the other party with an Application for Dispute Resolution. It provides,

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

(a) by leaving a copy with the person;

(b) if the person is a landlord, by leaving a copy with an agent of the landlord;

(c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to

the address at which the person carries on business as a landlord;

(d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;

(e) as ordered by the director under section 71 (1)
[director's orders: delivery and service of documents].

(2) An application by a landlord under section 55 *[order of possession for the landlord]* , 56 *[application for order ending tenancy early]* or 56.1 *[order of possession: tenancy frustrated]* must be given to the tenant in one of the following ways:

(a) by leaving a copy with the tenant;

(b) by sending a copy by registered mail to the address at which the tenant **resides**;

(c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;

(d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;

(e) as ordered by the director under section 71 (1)
[director's orders: delivery and service of documents].

[my emphasis added]

Residential Tenancy Guideline 12: *Service Provisions* states that the address for service must be the tenant's address of residence at the time of mailing. In this case, I find that the time of mailing was October 16, 2008. Therefore, I must decide whether the landlord has sufficiently established that the tenants resided at the rental unit on October 16, 2008.

While it is possible that a person may reside at a place using a bedroll, I do not find the existence of a bedroll in the rental unit on October 15, 2008 to be sufficiently conclusive for me to find, based on the balance of probabilities, that any of the named tenants were actually residing in the rental unit as of October 16, 2008. Although the rental unit was not completely vacated, and some items of value remained in the rental unit on October 15, 2008, I am not satisfied that those items were in the rental unit on October 16, 2008 and even if they were, the nature of those items are not sufficient to satisfy me that a tenant was residing in the rental unit. Leaving one's belongings at a particular place does not necessarily mean a person is residing at that place.

Therefore, I find that the landlord has not sufficiently satisfied me that the tenants were served with the hearing documents in accordance with the requirements of section 89 of the Act and I dismiss the landlord's application with leave to reapply. The landlord is at liberty to make another application within two years of the end of the tenancy in order to adequately serve the tenants.

Conclusion

The landlord's application is dismissed with leave to reapply.

November 14, 2008

Date of Decision