



Dispute Resolution Services

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

Decision

Dispute Codes: ET, OPR, FF

Introduction

This hearing dealt with the landlord's application for an early end to tenancy, an order of possession, and recovery of the filing fee for this application. The landlord's agent participated in the hearing and gave affirmed testimony. Pursuant to details which are set out below, the tenant did not attend the hearing.

Issues to be Decided

- Whether the landlord is entitled to an early end to tenancy, an order of possession and a monetary order under the *Act*

Background and Evidence

Pursuant to a written residential tenancy agreement, the month-to-month tenancy began on October 1, 2008. The tenant's portion of the subsidized rent is \$375.00 per month, and a security deposit of \$400.00 was paid at the outset of tenancy.

As a result of various concerns about the tenant's conduct, the landlord issued a 1 month notice to end tenancy for cause. The landlord submitted into evidence a copy of the 1 month notice dated January 6, 2009, which was served in person on the tenant that same day. The date shown on the notice by when the tenant must vacate the unit is February 28, 2009.

Subsequent to serving the 1 month notice, the landlord has become more concerned about the seriousness of the tenant's conduct. Accordingly, the landlord applied for dispute resolution seeking an early end to tenancy and an order of possession.

On January 9, 2009, the landlord attempted to serve the application and notice in person on the tenant. However, on that occasion the tenant was being removed from the vicinity of the rental unit by police and, following that, the tenant was incarcerated and remains incarcerated. In the result, the application and notice were unable to be served in person on the tenant and, instead, the documents were posted on the tenant's door.

Analysis

Based on the documentary evidence and the undisputed testimony of the landlord's agent, I find that the tenant was served with a 1 month notice to end tenancy for cause. The landlord's reasons for issuing the notice are identified in the notice.

Section 56 of the *Act* addresses **Application for order ending tenancy early**. In part, this section of the *Act* provides that "the director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession..." Further, section 56(3) of the *Act* provides:

56(3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end tenancy.

Sections 88, 89 and 90 of the *Act* speak to, respectively, **How to give or serve documents generally, Special rules for certain documents** and **When documents are considered to have been received**. In addition to the relevant statutory provisions, Residential Tenancy Policy Guideline #12 addresses **Service Provisions**.

Section #3 of Policy Guideline #12 provides that service of documents on a tenant with respect to an application by a landlord for an order ending tenancy early, must be made in one of four different ways: personal service, registered mail, posting, or an arbitrator's order regarding service.

Posting is stated to mean "attaching a copy to a door or other conspicuous place at the address at which the tenant resides."

Section #4 of Policy Guideline #12 speaks more fully to the meaning of posting as follows:

- **by attaching a copy of the document to a door or other conspicuous place at the address where the person to be served resides at the time of service**

If this method is used, the person attaching the document should make sure that the door or conspicuous place belongs to the person's residence, and that the document will be readily seen by the person entering or leaving the residence.

Section #9 of Policy Guideline #12 addresses **Deemed Service** and states, in part, that a document not served personally is deemed to have been served "if given or served by attaching a copy of the document to a door or other place, on the third day after attaching it."

However, in Section #9 it is further stated:

"Deemed service" means that the document is presumed to have been served unless there is clear evidence to the contrary.

In the circumstances of this case, testimony by the landlord's agent confirms that as a result of the tenant's incarceration he has clearly been unable to take delivery of either the application for dispute resolution or the notice of hearing. In view of all of the above information, I find that the tenant cannot be deemed to have been served with the application or the notice. The landlord's application must therefore be dismissed.

Conclusion

I hereby dismiss the landlord's application with leave to reapply.

DATE: January 16, 2009

Dispute Resolution Officer

