



Dispute Resolution Services

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

Decision

Dispute Codes:

MNR

OPR

FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on the Ten-Day Notice to End Tenancy for Unpaid Rent dated December 2, 2008 and effective December 23, 2008 and a monetary order for rent owed in the amount of \$10,000.00 representing 8 months of rental arrears at \$1,250 per month.

A representative of the landlord appeared on behalf of the landlord and the tenant appeared.

Preliminary Matters

At the outset of the hearing the tenant advised that the tenant had only learned about the Notice of Hearing yesterday and that this morning the tenant had faxed in key evidence to refute documents submitted into evidence by the landlord. The tenant also alleged fraud in regards to a tenancy agreement dated April 1, 2008, submitted into evidence by the landlord. The tenant, testified that the name shown as respondent was wrong, and was not his name, but that of his deceased father. The tenant also denied ever being served with the Ten-Day Notice to End Tenancy dated December 2, 2008.

Service

On the issue of service of the Application and Hearing documents, I note that the confirmation of registered mail that was marked, "returned to sender" contained the name of the tenant's late father, which was also the name listed as the Respondent on the landlord's Application for Dispute Resolution.

In regards to the issue of service of the Notice to End Tenancy, the landlord testified that the Notice was delivered by courier in person and handed to an adult person at the residence. Verification of this service submitted into evidence by the landlord consisted of a copy of an "Order Tracking Slip" printout from the courier company showing delivery of an item to the tenant's address on December 2, 2008 that was handed to a female whose first and last name was provided on the courier slip. The individual who personally served this document was not present at the hearing to testify. The tenant denied knowing the female named and denied that the Notice was served.

Section 88 requires that all documents, other than those referred to in section 89 *[special rules for certain documents]*, which would include a Notice to End Tenancy, must be served by: leaving a copy with the person; by sending a copy by ordinary mail or registered mail to the address at which the person resides; by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant; by leaving a copy at the person's residence with an adult who apparently resides with the person; by leaving a copy in a mail box or mail slot for the address at which the person resides or by attaching a copy to a door or other conspicuous place at the address at which the person resides, by transmitting a copy to a fax number provided as an address for service by the person to be served: or by any other means of service prescribed in the regulations.

Serving a Notice of Hearing is subject to special rules under section 89 (1) which states that an application for dispute resolution or a decision of the director to proceed with a review must only be given by leaving a copy with the person or sending a copy by registered mail to the address at which the person resides or to a forwarding address provided by the tenant.

I find that the Notice of Hearing was not served to this respondent. In regards to whether the Ten-Day Notice to end Tenancy was served, I make no findings.

Adjournment

The tenant/respondent made a request for an adjournment to submit and serve evidence on the basis that the tenant had just learned about the hearing the day before the hearing and had not been served with the landlord's evidence or other documents

Pursuant to the Residential Tenancy Rules of Procedure, if the respondent intends to dispute an Application for Dispute Resolution, copies of all evidence the respondent intends to rely upon as evidence must be received by the Residential Tenancy Branch and served on the applicant as soon as possible and at least five (5) days before the dispute resolution proceeding. Or, if the date of the dispute resolution proceeding does not allow the five (5) day requirement to be met, then all of the respondent's evidence must be received by the Residential Tenancy Branch and served on the applicant at least two (2) days before the dispute resolution proceeding.

The tenant testified that he had faxed in his evidence to the Residential Tenancy Branch the day before the hearing. This evidence was not before me and the landlord testified that this evidence was not served on the landlord. The Residential Tenancy Rules of Procedure state that if copies of the respondent's evidence are not received by the Residential Tenancy Branch or served on the applicant as required, the Dispute Resolution Office must apply Rule 11.6 to evidence the respondent presents at the dispute resolution proceeding

Rule 11.6 states that the Dispute Resolution Officer may adjourn a dispute resolution proceeding to receive evidence that a party states was submitted to the Residential Tenancy Branch but was not received by the Dispute Resolution Officer before the dispute resolution proceeding.

Prior to making a determination regarding a possible adjournment I attempted to establish exactly what evidence had been submitted and how it related to the issues put forward by the landlord in this dispute. However the tenant was not able to give sufficient details to make this determination.

I received verbal submissions from the parties in regards to the matter of adjournment and in the course of these submissions the tenant indicated a willingness to compromise in regards to the end of the tenancy. A mediated discussion ensued and the parties reached a mutual agreement to end the tenancy on February 28, 2008. The parties were not able to reach an agreement in regards to the monetary claims.

Conclusion

Accordingly, I hereby issue an Order of Possession in favour of the landlord effective 1:00 p.m. on Saturday February 28, 2009. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

While I have granted an Order of Possession, I make no findings on the landlord's monetary claims or any other matters raised in the landlord's application. I hereby dismiss the portion of the landlord's application seeking a monetary order for rent owed with leave to reapply.

February 2009

Date of Decision

Dispute Resolution Officer