



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPC, FF

Introduction

This hearing was scheduled to hear the landlord's request for an Order of Possession for cause and recovery of the filing fee. The tenants did not appear at the hearing. The landlord's agent testified that the tenants were both served with notification of this hearing in person approximately two weeks ago in the presence of a witness. The witness affirmed that the both tenants received the hearing package. The witness is the tenant of the upper unit in the residential property. I was satisfied that the tenants were notified of today's hearing and proceeded to hear from the landlord's agent.

Issues(s) to be Decided

1. Is the landlord entitled to an Order of Possession for cause?
2. Recovery of the filing fee.

Background and Evidence

The agent testified that the tenancy commenced January 1, 2009 and the tenants are required to pay \$750.00 in rent on the 1st day of the month. The landlord did not provide a copy of the tenancy agreement as evidence for the hearing.

As evidence for the hearing, the landlord provided a 1 Month Notice to End Tenancy for Cause dated June 1, 2009 which appeared to be the original document. The agent testified that both tenants were personally served a copy of the 1 Month Notice to End Tenancy. The witness testified that the landlord served an original Notice to End Tenancy upon the tenants. The agent's son appeared at the hearing and testified that his father meant to say one Notice to End Tenancy was served upon both tenants but that they were not sure as to which tenant was handed the Notice to End Tenancy. Finally, the agent explained that the landlord would have the details related to service of the Notice to End Tenancy but that she was unable to attend the hearing today.

The agent testified that the reason for ending the tenancy is that the tenants have been causing disturbances.

Analysis

The purpose of serving documents under the Act is to notify the person being served of their breach and notification of their rights under the Act in response. The landlord is seeking to end the tenancy due to this breach; however, the landlord has the burden of proving that the tenants were served with the Notice to End Tenancy.

Service of a Notice to End Tenancy must comply with section 88 of the Act which permits a landlord to serve a tenant in one of the following ways:

- Leaving a copy with the person;
- Sending a copy by ordinary mail or registered mail to the address at which the person resides;
- 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;
- 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 served.

Where a respondent does not appear at a hearing, the applicant must be prepared to prove service. Proof of service for personal service should include the date and time of service, where the person was served and the name of the person served.

Having heard inconsistent testimony as to whether a copy or an original Notice to End Tenancy was served and upon which tenant, or both tenants, I do not find the landlord sufficiently proved service of the Notice to End Tenancy upon the tenant(s). Therefore, I dismiss the landlord's application for an Order of Possession.

As the landlord was not successful with this application, I do not award the filing fee to the landlord.

Conclusion

The landlord's application for an Order of Possession is dismissed due to insufficient proof of service of the Notice to End Tenancy upon the tenant(s).



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Ministry of Housing and Social Development

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: July 28, 2009.

Dispute Resolution Officer