



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPC, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and to recover the filing fee for this proceeding.

The Landlord's agent (C.I.) said he served the Tenant with the Application and Notice of Hearing in person on March 25, 2011. The Tenant denied being served in person with the Landlord's hearing package and said she was advised about it by her assistant. The Landlord's agent also claimed that he served the Tenant with his evidence package on April 7, 2011 by posting a copy on the rental unit door and by sliding a copy under the door. The Tenant denied receiving the evidence packages and said instead that she also received those documents from her assistant.

The burden of proof is on the Landlord to show on a balance of probabilities that the Tenant was served with the hearing and evidence packages. I find that the Landlord has provided insufficient evidence that the Tenant was served with those documents as required by s. 89 of the Act however given that the Tenant admitted receiving those documents from her assistant, I find pursuant to s. 71 of the Act that she has been sufficiently served for the purposes of the Act.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This tenancy started on October 31, 2010. Rent is \$375.00 per month. The Landlord's agent (C.I.) said he served the Tenant in person on December 28, 2010 with a One Month Notice to End Tenancy for Cause dated December 28, 2010. The Tenant denied this and claimed that she was hospitalized on that date and in a coma. The Landlord's agent then admitted he had not served the Tenant with the Notice but that the previous building manager had done so. The Landlord's agent (D.D.) however claimed that it was the Landlord's policy to serve documents by posting them to a door and argued that the One Month Notice would have been served by that method. The Tenant denied

receiving a copy of the One Month Notice dated December 28, 2010 at any time prior to receiving it in the Landlord's evidence package.

Analysis

In this matter, the Landlord has the burden of proof and must show (on a balance of probabilities) that the Tenant was served with the One Month Notice to End Tenancy for Cause. This means that if the Landlord's evidence is contradicted by the Tenant, the Landlord will need to provide additional, corroborating evidence to satisfy the burden of proof. The Landlord's agents claimed that a previous manager would have served the Tenant with the One Month Notice by posting it to the rental unit door, however that person was not available to give evidence at the hearing and the Landlord had no other evidence to corroborate that the Tenant was served as alleged.

Given the contradictory evidence of the Tenant and in the absence of any corroborating evidence from the Landlord, I find that there is insufficient evidence to conclude that the Tenant was served with the One Month Notice to End Tenancy for Cause dated December 28, 2010 as alleged by the Landlord and as a result, that Notice is cancelled. Consequently, the Landlord will have to re-serve the Tenant with a new Notice

Conclusion

The Landlord's application is dismissed. 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: April 13, 2011.

Residential Tenancy Branch