



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for orders as follows:

1. An Order of Possession;
2. A monetary order pursuant to Section 67; and
3. An Order to recover the filing fee pursuant to Section 72.

Both parties appeared at the hearing of this matter. The landlord gave evidence that he served the tenant with the 10 day Notice to End Tenancy on April 15, 2011 by posting the notice to the rental unit door. Further, that he served the Application for Dispute Resolution by sending it on May 11, 2011 via registered mail sent to the rental unit. The landlord submitted that the tenant does not live at the rental unit but he knows he attends there on a regular basis.

Preliminary Issue – Service

The tenant testified that he only became aware of this hearing yesterday when the landlord phoned him to advise him of it. The tenant submitted that the landlord also informed the tenant that there were envelopes waiting for him. The tenant testified that he obtained the envelopes and had opened them just prior to the hearing. The tenant notes that one document is a 10 day Notice to End Tenancy and the other is an Application for Dispute Resolution which is the subject of this hearing today. The tenant disagrees that there are rental arrears of \$12,315.00 and an Order of Possession.

The landlord submitted that the tenant knew the envelopes were waiting for him and he simply refused to pick them up although he attends the rental unit frequently.

Findings

The *Residential Tenancy Act* sets out the rules for service of documents:

How to give or serve documents generally

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served 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 ordinary mail or 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 ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) **by attaching a copy to a door or other conspicuous place at the address at which the person resides** or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service prescribed in the regulations.

Special rules for certain documents

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]*.

(3) A notice under section 94.21 *[notice of administrative penalty]* must be given in a manner referred to in subsection (1).

The evidence of the landlord is that he served the tenant with the 10 day Notice to End Tenancy by posting the Notice to the rental unit door. Further that he served the Application for Dispute Resolution by sending it by registered mail to the rental unit. The landlord's own evidence is that he knows the tenant does not live at the rental unit. In fact, the landlord has noted the tenant's actual address in his Application for Dispute Resolution.

The Act is clear that the documentation must be served to an address “...**at which the person resides.**” I find that while the tenant did actually receive the Notice to End Tenancy and the Application for Dispute Resolution he was not properly served with these documents as required by the Act and I am not satisfied that the tenant has had proper notice of the claims being made against him such that he can dispute the claims.

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

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*.