

DECISION

Dispute Codes OPR, MNR

Introduction

This matter was conducted by way of Direct Request Proceeding, pursuant to Section 55(4) of the *Residential Tenancy Act* (the “Act”), and dealt with an Application for Dispute Resolution by the Landlords for an Order of Possession and a Monetary Order for unpaid rent.

The Landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding on the Tenant SL. The Proof of Service document declares that on May 12, 2011 at 1:30 p.m., the Landlord SP served the Notice of Direct Request Proceeding on the Tenant SL by registered mail sent to the rental unit. The Landlord provided 2 copies of the same registered mail receipt and tracking number. The receipt indicates that the documents were addressed to SL **or** KS.

Section 89(1) requires the Landlords to provide each of the Tenants with copies of their Notice of Direct Request Proceeding documents for the purposes of seeking a Monetary Order. Based on the documentary evidence provided by the Landlords, it is not possible to ascertain which one of the Tenants was served with the Notice of Direct Request Proceeding documents. Therefore this portion of the Landlords’ application is dismissed.

Pursuant to the provisions of Section 89(2)(b) of the Act, both of the Tenants have been served with the Direct Request Proceeding documents for the purposes of requesting an Order of Possession.

Issue(s) to be Decided

- Are the Landlords entitled to an Order of Possession?

Background and Evidence

The Landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice to End Tenancy upon the Tenants;

- A copy of the tenancy agreement, which was signed by the parties on July 6, 2010, indicating monthly rent of \$675.00 due on the first day of each month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on May 2, 2011, with an effective vacancy date of May 12, 2011, for \$675.00 in unpaid rent that was due on May 1, 2011; and
- A written submission from the Landlords.

The Landlord's documentary evidence indicates that the Tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent by leaving the document personally with a person who appeared to be living with Tenants on May 2, 2011, in the afternoon. The Proof of Service document was signed by one of the Landlords as a witness.

The Landlords' written submission indicates that the Landlords were lead to believe, at the time they gave her the Notice, the person who lived with the Tenants (the Tenants' daughter) was an adult. However, the male Tenant later advised them that she was not an adult.

Analysis

Section 88 of the Act provides the methods for service of a Notice to End Tenancy, as follows:

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.

I find that the Landlords have not established that the Tenants' daughter is an adult and therefore have not established that they served the Tenants with the Notice to End Tenancy in accordance with the provisions of Section 88. The Landlords could have served the Tenants with the Notice in another fashion after being told that she was not an adult (i.e. Section 88(c), (f), or (g)).

The Landlords seek to end the Tenancy based on a Notice to End Tenancy that they have failed to prove was served on the Tenants in accordance with the provisions of the Act. Therefore, the Landlord's application for an Order of Possession is dismissed.

Conclusion

The Landlord's application is dismissed in its entirety.

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: May 31, 2011.
