



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, MNR

Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to sections 55(4) and 74(2) of the *Residential Tenancy Act (Act)*, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession and a monetary order.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 12, 2011 the Landlord and an agent for the Landlord posted the Notice of Direct Request Proceeding at the rental unit. The Proof of Service is signed by the Landlord and the agent for the Landlord.

Preliminary Matter

The purpose of serving the Notice of Direct Request Proceeding to tenants is to notify them that a dispute resolution proceeding has been initiated and to give them the opportunity to respond to the claims being made by the landlord. When a landlord files an Application for Dispute Resolution in which the landlord has applied for a monetary Order, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution in compliance with section 89(1) of the *Residential Tenancy Act (Act)*.

Section 89(1) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution in one of the following ways:

- (a) by leaving a copy with the person;
- (c) by sending a copy by registered mail to the address at which the person resides;
- (d) by sending a copy by registered mail to a forwarding address provided by the tenant;
or
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

The Landlord submitted no evidence to show that the Tenant was personally served with the Application for Dispute Resolution or Notice of Hearing and I therefore cannot conclude that either Tenant was served in accordance with section 89(1)(a) of the *Act*.

The Landlord submitted no evidence that the Application for Dispute Resolution was mailed to the either Tenant and I therefore cannot conclude that either Tenant was served in accordance with section 89(1)(c) or 89(1)(d) of the *Act*.

There is no evidence that the director authorized the Landlord to serve the Application for Dispute Resolution to either Tenant in an alternate manner, therefore I find that neither Tenant was served in accordance with section 89(1)(e) of the *Act*.

The Landlord submitted no evidence to cause me to conclude that either Tenant received the Application for Dispute Resolution, therefore I cannot conclude that the Application has been sufficiently served pursuant to sections 71(2)(b) or 71(2)(c) of the *Act*.

As the Tenants have not been served with Notice of this hearing in accordance with section 89(1) of the *Act*, I find that I am unable to consider the Landlord's application for a monetary Order. The Landlord's application for a monetary Order is therefore dismissed, with leave to reapply on this specific issue.

When a landlord files an Application for Dispute Resolution in which the landlord has applied for an Order of Possession, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution in compliance with section 89(2) of the *Act*.

Section 89(2) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution in one of the following ways:

- (a) by leaving a copy with the tenant;
- (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; or
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

Based on the testimony of the Landlord and in the absence of evidence to the contrary, I find that the Tenants were served with the Application for Dispute Resolution and the Notice of Hearing pursuant to section 89(2)(d) of the *Act* on August 12, 2011.

As both Tenants have been properly served with the Application for Dispute Resolution and the Notice of Hearing pursuant to section 89(2)(d) of the *Act*, I find it is appropriate to consider the Landlord's application for an Order of Possession.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*.

Background and Evidence

I have reviewed the following evidence submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenants
- A copy of a residential tenancy agreement, which names both Tenants but appears to only be signed by the male Tenant. The agreement indicates that the tenancy began on April 01, 2011 and that the rent of \$750.00 per month is due on the first day of each month
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was signed by the Landlord and is dated August 03, 2011, which declares that the Tenants must vacate the rental unit by August 13, 2011 unless the Tenants pay the rent within five days of receiving the Notice or submit an Application for Dispute Resolution seeking to set aside the Notice within five days of receiving the Notice. The Notice declares that the Tenants owe rent, in the amount of \$750.00, for unpaid rent from August of 2011
- A copy of a Proof of Service of the Ten Day Notice to End Tenancy for Unpaid Rent, in which an agent for the Landlord stated that he personally served the Notice to an "adult acquaintance" with the first name of "Colleen" on August 03, 2011.

On the Application for Dispute Resolution, the Landlord declared that the Notice to End Tenancy was personally served to an acquaintance of the Tenant. In this declaration the Landlord wrote the words "(additional tenant?)".

On the Application for Dispute Resolution, the Landlord noted that the male Tenant has advised his son that he did not receive the Notice to End Tenancy.

On the Application for Dispute Resolution the Landlord declared that the Tenant has not paid rent for August of 2011.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the male Tenant entered into a written tenancy agreement that required the Tenant to pay monthly rent of \$750.00 by the first day of each month.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant had not paid rent for August of 2011 by the time the Landlord filed this Application for Dispute Resolution. I have no evidence to show that the Tenant paid the outstanding rent since the Application for Dispute Resolution was filed.

Section 46 of the *Act* authorizes a landlord to end a tenancy for unpaid rent by serving the tenant with a Notice to End Tenancy. The purpose of serving a Notice to End Tenancy is to notify the person being served of their breach and notify them of their rights under the *Act*. The Landlord has the burden of proving that the Tenant was served with the 10 Day Notice to End Tenancy in accordance with section 88 of the *Act*.

Section 88(a) of the *Act* authorizes a landlord to serve a Notice to End Tenancy by leaving a copy with the person. There is no evidence to show that the Notice to End Tenancy was personally served to the Tenant.

Section 88(c) of the *Act* authorizes a landlord to serve a Notice to End Tenancy by sending a copy by mail to the address at which the person resides. There is no evidence to show that the Notice to End Tenancy was served on the Tenant in accordance with section 88(c) of the *Act*.

Section 88(d) of the *Act* authorizes a landlord to serve a Notice to End Tenancy by sending a copy by mail to a forwarding address provided by the tenant. There is no evidence to show that the Notice to End Tenancy was served on the Tenant in accordance with section 88(d) of the *Act*.

Section 88(e) of the *Act* authorizes a landlord to serve a Notice to End Tenancy by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant. Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that a Ten Day Notice to End Tenancy was personally served to an adult acquaintance of the Tenant on August 03, 2011.

I find that the Landlord submitted insufficient evidence to show that the acquaintance resides in the rental unit. I find the notation "(additional tenant?)" which appears on the Application for Dispute Resolution implies that the Landlord is not certain if this acquaintance is a tenant at the rental unit. I therefore cannot conclude that the acquaintance resides in the rental unit and I therefore cannot conclude that the Notice to End Tenancy was served on the Tenant in accordance with section 88(e) of the *Act*.

Section 88(f) of the *Act* authorizes a landlord to serve a Notice to End Tenancy by leaving a copy in the mail box or mail slot for the address at which the person resides. There is no evidence to show that the Notice to End Tenancy was served on the Tenant in accordance with section 88(f) of the *Act*.

Section 88(g) of the *Act* authorizes a landlord to serve a Notice to End Tenancy by attaching a copy to a door or other conspicuous place at the address at which the

person resides. There is no evidence to show that the Notice to End Tenancy was served on the Tenant in accordance with section 88(g) of the *Act*.

Section 88(h) of the *Act* authorizes a landlord to serve a Notice to End Tenancy by transmitting a copy to a fax number provided by the Tenant as a service address. There is no evidence to show that the Notice to End Tenancy was served on the Tenant in accordance with section 88(h) of the *Act*.

Section 88(i) of the *Act* authorizes a landlord to serve a Notice to End Tenancy as ordered by the director under section 71(1) of the *Act*. There is no evidence to show that the Notice to End Tenancy was served on the Tenant in accordance with section 88(i) of the *Act*.

Conclusion

As the Landlord has failed to establish that the Notice to End Tenancy was served on the Tenant, I dismiss the Landlord's application for an Order of Possession.

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: August 16, 2011.

Residential Tenancy Branch