

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:46 a.m. in order to enable the tenant to connect with this hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that the tenant vacated the rental unit on July 8, 2011, so there was no need to pursue the landlord's application for an Order of Possession.

Preliminary Issue – Service of Documents

The landlord submitted a copy of the 10 Day Notice to End Tenancy for Unpaid Rent that she said she handed to the tenant on July 2, 2011. The landlord testified that she sent the tenant a copy of the landlord's dispute resolution hearing package by registered mail on July 14, 2011. She provided the Canada Post Tracking Number to confirm this mailing. She said that the hearing package was returned by Canada Post with the notation that there was no such address.

I asked the landlord how she obtained the tenant's address where she sent the dispute resolution hearing package. She testified that at the end of the tenancy, she asked the tenant for his forwarding address. She said that he did not know his new address, but dialled the phone number for his granddaughter who did have his new forwarding address. She testified that she received the tenant's forwarding address from the tenant's granddaughter with the tenant standing beside her.

Analysis – Landlord's Service of Dispute Resolution Hearing Package

Section 89 of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution for a monetary Order:

89(1) An application for dispute resolution,...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 document]...*

Section 90 of the *Act* considers that documents sent in accordance with section 89 are considered served on the fifth day after their mailing.

The landlord did not provide any written evidence to demonstrate that the forwarding address she obtained for the tenant was indeed accurate. She presented no witness or written statement from anyone who could attest to the accuracy of the tenant's forwarding address provided to her. She provided no written evidence from the tenant confirming the accuracy of the forwarding address provided to her when he vacated the rental unit. She testified that the copy of the dispute resolution hearing package sent to the tenant was returned by Canada Post because there was no such address.

Due to these deficiencies in demonstrating that the landlord's dispute resolution hearing package was sent to the tenant's accurate forwarding address, I am not satisfied that the tenant was properly served with the landlord's application for dispute resolution in accordance with section 89(1) of the *Act*. Without proper notice of this hearing, I cannot consider the landlord's application for a monetary Order against the tenant.

Conclusion

I dismiss the tenant'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*.