



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, MNR; MNDC; MNSD; FF

Introduction

This matter was scheduled to deal with an Application for Dispute Resolution by the Landlord for an Order of Possession; a Monetary Order for unpaid rent; compensation for damage or loss under the Act, regulation or tenancy agreement; to apply the security deposit towards partial satisfaction of his monetary award; and to recover the cost of the filing fee from the Tenants.

The Landlord provided affirmed testimony at the Hearing. The Hearing remained open for 25 minutes, but none of the Tenants signed into the teleconference.

Preliminary Matters

At the outset of the Hearing, the Landlord testified that the Tenants moved out of the rental unit on April 16, 2012, and that he has taken back possession of the rental unit. Therefore, his application for an Order of Possession is dismissed, as it is no longer required.

The Landlord testified that he sent copies of the Notice of Hearing documents to each of the Tenants, via registered mail to the rental unit, on April 13, 2012. The Landlord provided copies of the receipts and tracking numbers for each of the documents. A search of the Canada Post Tracking system indicates that on April 16, 2012, a notice was left for each of the Tenants advising them where they could pick up the registered documents.

Section 90 of the Act deems service by mail to be effected 5 days after mailing the documents. The Tenants did not live at the rental unit on April 18, 2012. Furthermore, the Tenants moved out of the rental unit on the day that the Notice was left by Canada Post. Therefore, I explained to the Landlord that I am not persuaded that the Tenants received notice of the Hearing by registered mail.

The Landlord testified that he had searched the Canada Post website earlier and found that the documents had not been signed for, so he bundled up extra copies of the Notice of Hearing documents and took them to the forwarding address that one of the Tenants had provided. He testified that he left all of the documents with that Tenant's mother.

Section 89 of the Act provides the methods of service for an application for an Order of Possession and a Monetary Order. Section 89 states:

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).

A landlord may serve a tenant with the Notice of Hearing documents by leaving a copy with at the tenant's residence with an adult who apparently resides with the tenant for

the purpose of requesting an Order of Possession, but not for the purpose of requesting a Monetary Order. Where the Application for Dispute Resolution seeks a Monetary Order, the Notice of Hearing documents must be provided in accordance with the provisions of Section 89(1) of the Act.

I find that the Landlord did not serve any of the Tenants in accordance with the provisions of Section 89(1) of the Act. Therefore, the Landlord's application for a Monetary Order is dismissed **with leave to reapply**.

Conclusion

The Landlord's Application is dismissed **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*.

Dated: May 01, 2012.

Residential Tenancy Branch