Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

OPR, MNR, MNSD, MNDC, FF

Introduction

This Dispute Resolution hearing was held to deal with an Application by the landlord for AN Order of Possession and a monetary order based on a Ten Day Notice to End Tenancy for Unpaid Rent issued under the *Residential Tenancy Act*, (the *Act)*.

The landlord was in attendance. The tenant did not appear. The landlord testified that he served the tenant with the hearing documents by registered mail sent to the rental unit on June 19, 2012.

Preliminary Issue

The landlord testified that the tenancy began on October 1, 2011 and the landlord issued the tenant with a Ten Day Notice to End Tenancy for Unpaid Rent dated May 10, 2012 and effective May 25, 2012. The tenant did not dispute the Notice and moved out. The landlord testified that the tenant took steps to vacate by May 29, 2012 at which time a "preliminary" move-out inspection was done.

The landlord testified that the tenant did not return the key and left some items still in the unit. According to the landlord, the tenant stated that he would be returning to clean-up the unit, and was also still receiving mail at the address after May 29, 2012. However, the tenant never returned.

The landlord's position was that the tenant was still in possession of the rental unit after May 29, 2012 and therefore the rental unit was considered as a valid address where the tenant resided. According to the landlord, when the hearing package was mailed on June 19, 2012, the tenant's residence was still the dispute property.

Section 89 of the Act states that an application for dispute resolution, when required to be served by the landlord to the tenant, must either be given directly to the person or sent by registered mail to the address at which the person resides or to a written forwarding address provided by the tenant.

I find that no written forwarding address was provided by the tenant.

Section 90 of the Residential Tenancy Act determines that a document sent by registered mail is deemed to have been served in 5 days.

In this instance I find that the service date for the Notice of Hearing sent by registered mail on June 19, 2012 would have been deemed as served, if sent to the tenant at his place of residence, on June 24, 2012. The issue to determine is whether the tenant still resided at the dispute address as of June 24, 2012, to be considered as having been properly served at that address.

Regardless of the fact that I accept the landlord's testimony that the tenant had left or abandoned some possessions in the rental unit on May 29, 2012 and failed to surrender the keys, I still find it evident that the tenant had permanently vacated the rental premises at or around that time. Moreover, the fact that the tenant apparently verbally committed that he would return to clean the unit, would not support the landlord's position that he still resided in the unit.

I find that the tenant had already vacated the unit prior to the date that the registered mail was served. Therefore, I find that the documents were served to an address where the tenant no longer resided.

For the reasons stated above, I find that the mailing of the hearing package would not meet the definition of service by registered mail to the "*address at which the person resides*". Accordingly I find that there was no valid service of the hearing package in compliance with the Act.

I find that the matter under dispute cannot proceed because the landlord has not sufficiently proven that the tenant was properly served. Accordingly, I dismiss this application with leave to reapply at a later date should the landlord wish to do so.

Conclusion

Based on evidence and testimony, I hereby dismiss this 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*.

Dated: July 09, 2012.

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Residential Tenancy Branch