



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP, RP, PSF, MNR, MNDC, OLC, FF, OPR

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlords applied for:

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

The tenants applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

The tenants did not attend this hearing, although I waited until 3:15 p.m. in order to enable them to connect with this teleconference hearing scheduled for 3:00 p.m. The landlords attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Accordingly, **in the absence of any evidence or submissions from the tenants at this hearing, I order the tenants' application dismissed without liberty to reapply.**

The landlord's agent (the agent) testified that the tenants abandoned the rental unit on or about October 25, 2012. She testified that the tenants had removed everything from the rental unit but for garbage and debris. She testified that she has changed the locks on the rental unit after the tenants abandoned the rental unit. As the landlords already have possession of the rental unit, they withdrew their application for an end to this tenancy and an Order of Possession. The landlords' application for an Order of Possession is withdrawn.

Preliminary Issue- Service of Documents

The landlords entered into written evidence a copy of a Proof of Service document in which a witness attested to the agent's posting of the 10 Day Notice on the tenants' door at 10:05 a.m. on October 2, 2012. I am satisfied that the 10 Day Notice was served to the tenants in accordance with the *Act*.

The agent gave sworn testimony that she posted a copy of the landlords' amended dispute resolution hearing package on the tenants' door at 5:46 p.m. on October 12, 2012. She testified that a witness watched her post this package on the tenants' door.

Analysis - Service of Landlords' Application for Dispute Resolution

Although section 89(2) of the *Act* enables a landlord to serve a tenant by posting the dispute resolution hearing package (including the application for dispute resolution) on the tenants' door, section 89(1) of the *Act* is the relevant section for the service of an application for a monetary award. Section 89(1) reads as follows:

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]...

The landlord's agent testified that she served the tenants with the dispute resolution hearing package by posting it to the tenants' rental unit door. As outlined in section 89(1) of the *Act*, this is not an acceptable form of service of an application for a monetary award. I am therefore unable to grant that portion of the landlords' application seeking a monetary Order for rental arrears because I am not satisfied that the tenants have had proper notice of that claim. For this reason, I dismiss the landlords' application for a monetary award with leave to reapply.

Conclusion

The tenants' application for dispute resolution is dismissed without leave to reapply. The landlords' application for an end to this tenancy and an Order of Possession is withdrawn because the landlords already have legal possession of the rental unit.

I dismiss the landlords' application for a monetary award 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: October 30, 2012

Residential Tenancy Branch