



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This matter proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the “Act”), and dealt with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order for unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on December 20, 2012, the landlord served on the tenant the Notice of Direct Request Proceeding. The landlord check 2 boxes on the form, both the box indicating that he left the documents with the tenant at the rental and the box indicating that the documents were posted, but the form does not identify the address at which the documents were posted.

Issue to be Decided

Can this issue be dealt with by way of Direct Request Proceeding?

Background and Evidence

The landlord submitted a copy of a document entitled “Residential Agreement” which is headed with the following sentence:

OFFER: The Tennant(s)[sic] hereby offer to rent from the landlord, the premises and service stated, under the following terms and conditions.

The document is signed by both parties and also contains the following term below the parties’ signatures:

Consent: If the applicant is not accepted, the full deposit will be refunded.
Also there would be certain monetary compensation for breaking the contract, which equals to half of the monthly rent.

Analysis

Section 89 of the Act identifies the means by which an application for dispute resolution in which a monetary order is requested may be served. The section permits personal service or service via registered mail but does not permit posting of the document. Because the landlord checked 2 boxes on the proof of service form and did not fill out the address at which documents were allegedly posted, I am uncertain whether the landlord made a mistake on the form or served the documents personally as well as posting them. I am therefore unable to determine whether the application was served in accordance with section 89 of the Act.

I have further concerns about the document entitled “Residential Agreement” which has some characteristics of an application for tenancy and some characteristics of a tenancy agreement. I am unsure whether the document represents an agreement or an application.

For these reasons I find that the matter should be adjourned to a participatory hearing in order to allow the landlord opportunity to confirm that the tenant was served pursuant to section 89 of the Act and to confirm that the document in question is in fact a tenancy agreement.

A participatory hearing will take place on January 25, 2013 at 9:30 a.m. and will be conducted by telephone conference call. Included with the landlord’s copy of this decision are notices of hearing. The landlord must serve the tenant via registered mail or personal service with a copy of the notice of hearing within 3 days of receiving this decision. The landlord should be prepared to give evidence of service at the hearing.

The landlord has already served on the tenant a copy of his application and evidence, but if he wishes to rely on further evidence or if the tenant wishes to submit any documentary evidence, that evidence must be served both on the branch and the other party 5 days prior to the hearing.

Failure to attend the hearing at the scheduled time, with all relevant documents and/or witnesses, will result in a decision being made on the basis of any information before the dispute resolution officer and the testimony of the party in attendance at the hearing.

Conclusion

The matter is adjourned to a participatory hearing.

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: December 27, 2012

Residential Tenancy Branch