



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled to deal with a landlord's application for an Order of possession for unpaid rent and a Monetary Order for unpaid rent; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. The tenants did not appear at the hearing. I was provided evidence that the hearing packages were mailed to each of the tenants, at the rental unit, on December 18, 2012 via registered mail. The registered mail tracking information revealed that the registered mail was delivered to a person currently occupying the rental unit.

The landlord testified that the tenants named in this Application and on the tenancy agreement moved off the property on December 12, 2012; however, two occupants have remained on the property without the landlord's consent or authorization. The landlord confirmed that he does not have a tenancy agreement with the occupants and has never collected monies from or on behalf of the occupants in exchange for possession of the rental unit.

The landlord explained that rent was not paid for December 2012 and on December 9, 2012 he gave a 10 Day Notice to End Tenancy for Unpaid Rent to the current occupant of the rental unit. I heard that the tenants confirmed receipt of the 10 Day Notice in a telephone call with the landlord on December 9, 2012. The tenants also confirmed in a telephone call with the landlord on December 12, 2012 that they would not be paying the rent and that they had moved off the property. The tenants did not provide the landlord with their current address of residence or forwarding address.

The landlord is seeking to regain possession of the unit as the occupants are refusing to leave the property and are damaging the unit. The landlord attempted to serve the tenants with this Application for Dispute Resolution using the rental unit address since he does not know where else to serve the tenants.

Findings and Analysis

A party that files an Application for Dispute Resolution is required to serve the respondent(s) in a manner that complies with section 89 of the Act. If the applicant uses registered mail to serve an Application for Dispute Resolution the registered mail must be sent to the respondent's address of residence, at the time of mailing, or the respondent's forwarding address provided to the applicant by the respondent. It is upon the applicant to prove that the address used for service meets one of the above criteria.

Based upon the landlord's undisputed testimony I accept that the named tenants have moved off the property, and in essence abandoned the property, and the rental unit is no longer their address of residence. Accordingly, service of the hearing documents was not affected and I do not proceed to consider whether the landlord is entitled to the Orders he is seeking against the tenants. The landlord's claims against the tenants are dismissed with leave to reapply.

It is important to note that persons who are provided use and occupation of a rental unit under a tenancy agreement with the landlord meet the definition of tenants under the Act. Persons who use and occupy a rental unit without a tenancy agreement with the landlord are referred to as occupants. Tenants have rights and obligations under the *Residential Tenancy Act*; however, occupants do not have the rights or protection conveyed to tenants by the Act. Accordingly, a landlord does not require an Order of Possession under the Act to regain possession of a rental unit where it has been abandoned by all of the tenants.

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: January 17, 2013

Residential Tenancy Branch

