



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNR, MNDC, OPR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the landlord on December 11, 2012 seeking an Order of Possession based on the Ten Day Notice to End Tenancy for Unpaid Rent, dated November 30, 2012 and a monetary order for rent owed. On January 4, 2012, the landlord amended the application to remove the request for the Order of Possession and to add further monetary claims for cleaning and damage to the suite.

The landlord attended the hearing but the tenant did not appear.

Service

The landlord testified that the tenant was still living in the suite on December 11, 2012 when the application seeking the rental arrears was filed with the Residential Tenancy Branch and it was also confirmed that the tenant was still living in the suite on December 12, 2012 the day that the landlord mailed the Notice of Hearing package by registered mail. The landlord testified that the mail was addressed to the tenant at the rental unit address.

The tracking number of the registered mail package was given to confirm service. However the records indicated that the package was not picked up by the tenant and the mail was returned to the landlord unclaimed.

With respect to the exact date that the tenant actually vacated, the landlord testified that these tenants had reserved the building's elevator for moving furniture and possession out of the suite on December 6, 2012. According to the landlord, the tenant still had access to the unit until close to the end of December 2012 and the tenants apparently came in and out of the building at will during this period. The landlord testified that the tenant never returned the key fob. The landlord's position is that the tenant's were still residing in the suite during this period.

The landlord testified that, on January 4, 2013 the application was amended to include additional monetary claims and a copy of the amended application was sent by registered mail to the tenant at their new address on January 7, 2013. The tracking

report from Canada Post indicated that the item was returned to the sender as it “*does not meet product requirements*”. The landlord explained that they attempted to send registered mail to a postal delivery box in the United States and this fact made the delivery impossible. The amended application and evidence were not served on the tenant.

Preliminary Issue

With respect to the issue of whether the initial Notice of Hearing package was served on the tenant, I find that section 89(1) of the Act states that application for dispute resolution 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*]. (my emphasis)

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 initial Notice of Hearing, sent by registered mail on December 12, 2012 was deemed under section 90 of the Act to be December 17, 2012. I find that the landlord is required to prove that the tenant still resided in the rental unit on December 17, 2012. In this instance, I find that the landlord not able to testify with certainty that the tenant was still actually living in the rental unit on that specific date.

I accept the landlord's testimony that the tenant did have ongoing access to the rental unit until near the end of December 2012. However, I do not accept the landlord's argument that the fact the tenant still had access to the unit would function to satisfy the statutory requirement that the tenant was *residing* in the unit for the purpose of serving documents.

Based on the evidence before me, I find that the landlord failed to prove service by registered mail to the “*address at which the person resides*” in compliance with the Act.

Given the above, I find that the matter under dispute cannot proceed due to insufficient proof that the tenant was properly served with the Notice of Dispute Resolution Hearing documents. Accordingly, I dismiss this application with leave to reapply at a later date, should the landlord wish to do so.

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: January 15, 2013

Residential Tenancy Branch

