



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) 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 pursuant to section 72.

The tenant did not attend this 45 minute 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.

The landlords testified that they changed the locks on the rental unit on February 18, 2013, after it became apparent through their observations and communication with the tenant that the tenant was no longer residing in the rental unit. However, they noted that the tenant has not emptied the rental unit of all of her possessions after she abandoned the rental unit, leaving behind considerable debris and garbage. As they already have possession of the rental unit, they withdrew their application for an end to this tenancy and an Order of Possession.

The female landlord testified that she attached a copy of the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) and the written Residential Tenancy Agreement to the landlords' application for dispute resolution. I advised the landlords that the Residential Tenancy Branch (the RTB) has no record of having received any written evidence from either party other than the landlords' application for dispute resolution. As the landlords are no longer seeking an Order of Possession, there was no need to adjourn this hearing to obtain the documents the landlords said they provided to the RTB.

Preliminary Issues – Service of Documents

One of the landlords testified that the 10 Day Notice was placed in the tenant's mailbox on January 16, 2013. The female landlord said that the landlords' daughter witnessed

this service of the 10 Day Notice to the tenant. She also said that she received texts from the tenant following placement of the 10 Day Notice in the tenant's mailbox to confirm that the tenant received that notice. I accept the landlords' undisputed testimony that the 10 Day Notice was served to the tenant in accordance with the *Act*.

The male landlord testified that he attempted to hand deliver a copy of the landlords' dispute resolution hearing package to the tenant on January 28, 2013. Initially, he said that the tenant rolled up the notice, threw it at him, and profanely told him that she does not involve herself in such matters. He testified that she slammed the door and he picked up the hearing package and took it with him. He also testified that one of the tenant's neighbours who was not initially present during the hearing witnessed his handing of the hearing package to the tenant.

At the hearing, I noted the wording of the relevant provision of the *Act* and advised the landlords of my preliminary opinion that the method described by the male landlord did not appear to meet the requirements of service under the *Act*. The male landlord then testified that the tenant had the notice in her hand for over five minutes, read much of it while he was standing in front of her, and then threw the material on the ground.

After giving this sworn testimony, the male landlord was able to contact the witness who watched the above sequence of events. I was able to link the witness to the teleconference hearing. The witness testified that he watched the male landlord hand the notice to the tenant but she "did not even read the paper" and threw it down on the ground. He testified that the tenant had it in her hand for only a few moments.

Analysis – Service of Dispute Resolution Hearing Package

Section 89 of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution for a monetary award:

89(1) An application for dispute resolution,...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 document]...*

Although I gave the landlords and their witness every possible opportunity to demonstrate that the landlords had served the tenant in one of the above ways, I find that the male landlord did not serve the tenant in a manner required by section 89(1) of the *Act*. The male landlord and his witness confirmed that the male landlord did not **leave** the copy of the notice of dispute resolution with the tenant but picked up the notice after the male landlord attempted to give it to her. The landlord gave conflicting testimony as to how long the tenant had the document in her possession, varying from his initial estimate of a few moments (the estimate confirmed by the landlords' witness) to over five minutes. The male landlord testified that the tenant took more than five minutes to read the material provided to her, but the landlords' witness testified that the tenant "did not even read it" hurling it on the ground moments after receiving it. Based on the testimony of the male landlord and the witness, I also note that it seems unlikely that the landlords included any written evidence package with the dispute resolution hearing package, although the female landlord maintained that additional documentation was included in the package given to the RTB when the landlords applied for dispute resolution.

Under these circumstances, I am not satisfied that the male landlord properly served the tenant with the landlords' dispute resolution hearing package by leaving a copy with the tenant. For these reasons, I dismiss the landlords' application for a monetary award with leave to reapply.

Conclusion

The landlords' application for an end to this tenancy and an Order of Possession are withdrawn. 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: February 22, 2013

