



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Colliers International
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with the landlord's 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 the filing fee for this application from the respondent pursuant to section 72.

The respondent did not attend this hearing, although I waited until 1:45 p.m. in order to enable him to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

Preliminary Issue – Service of Documents

The landlord's male representative (the male landlord) testified that he posted the 10 Day Notice to End Tenancy (the 10 Day Notice) on the respondent's door at approximately 2:00 p.m. on November 27, 2012. He identified a tenant in another rental unit in this building who witnessed his posting of this 10 Day Notice on the respondent's door.

The male landlord testified that he posted a copy of the landlord's dispute resolution hearing package on the respondent's door at 3:30 p.m. on February 6, 2013. He again said that the same tenant in this rental building witnessed him post this package on the respondent's door.

Analysis- Landlord's 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]...*

I am not satisfied that the respondent was properly served with the landlord's application for dispute resolution for a monetary award in a manner required by section 89(1) of the *Act*. I dismiss the landlord's application for a monetary award with leave to reapply.

Section 89(2) of the *Act* allows a landlord to serve an application to end a tenancy and obtain an Order of Possession on the basis of a 10 Day Notice by posting it on the respondents door. I am satisfied that the landlord has served the landlord's dispute resolution hearing package as it pertains to the application to obtain an Order of Possession in accordance with section 89(2) of the *Act*.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord's female representative (the female landlord) testified that this one-year fixed term tenancy commenced on April 1, 2012, and is scheduled to end on March 31, 2013. Monthly rent is set at \$650.00, payable in advance on the first of each month. She said that the landlord continues to hold a \$325.00 security deposit for this tenancy. She testified that the landlord's residential tenancy agreement for this tenancy was with the respondent's live-in female friend. However, that friend was deceased when the respondent returned to the rental unit in November 2012, after a period of incarceration.

The landlord testified that there have been no payments towards this tenancy from November 2012 until the present. The application for a monetary award was for \$2,600.00 in unpaid rent.

Other than the landlord's application for dispute resolution, no written evidence was entered by either party.

Although the landlord requested an Order of Possession based on the 10 Day Notice, I was unwilling to issue such an Order without a copy of the 10 Day Notice. I allowed the landlord until 4:00 p.m. on the day of the hearing to send a fax of the 10 Day Notice to the Residential Tenancy Branch (the RTB). The female landlord said that she would send this fax as soon as possible and asked for an issuance of the Order of Possession on the basis of the 10 Day Notice.

Analysis

Shortly after the hearing was completed, the RTB received a fax of the landlord's 10 Day Notice. However, the landlord sent only the first page of that Notice. While the first page of the 10 Day Notice contains information specific to the tenancy, the second page is also required as it outlines the process to be followed if a recipient of a 10 Day Notice wishes to dispute the Notice. At the bottom of the first page of the 10 Day Notice is the following notation:

This is page 1 of a 2-page Notice. The landlord must sign page one of this notice and must give the tenant pages 1 & 2.

Although the landlord did not submit any written evidence for this hearing on time, under these somewhat unusual circumstances, I gave the landlord the additional opportunity of submitting a copy of the 10 Day Notice to the RTB by fax. However, the landlord provided only one-half of the 10 Day Notice. The landlord did not provide any witness statement or sworn testimony from a witness to confirm that the 10 Day Notice was posted on the respondent's door in its entirety as claimed by the landlord. The male landlord only had the first name of this witness and which rental unit he occupied to support the male landlord's testimony that the 10 Day Notice was posted on the respondent's door.

Under these circumstances, I am not satisfied that this commercial landlord has provided sufficient evidence to demonstrate that a full and complete 10 Day Notice was provided to the respondent to end this tenancy. As the landlord may be able to more adequately demonstrate in a subsequent application that the entire 10 Day Notice was served to the respondent by posting it on the tenant's door, I dismiss the landlord's application for an Order of Possession based on the 10 Day Notice of November 27, 2012 with leave to reapply. Should the landlord choose to reapply for dispute resolution, I would urge the landlord to submit complete documentation in advance of the hearing, including a Proof of Service document from anyone witnessing the service of documents. I would also suggest that both landlord representatives familiarize

themselves with the provisions of section 89 of the *Act* with respect to the service of applications for dispute resolution to respondents.

As the landlord has been unsuccessful in this application, the landlord is not entitled to recover the filing fees for this application from the respondent.

Conclusion

I dismiss the landlord's applications for an Order of Possession and a monetary award with leave to reapply. I dismiss the landlord's application to recover the filing fee for this application from the respondent without 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: March 04, 2013

Residential Tenancy Branch

