



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for cause pursuant to section 55; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1:45 p.m. in order to enable him to attend this hearing in the Burnaby Office of the Residential Tenancy Branch scheduled for 1:30 p.m. The landlords attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

Preliminary Issue - Service of Documents

The female landlord gave sworn testimony and written evidence that she served the tenant with the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) by handing it to the tenant's stepfather at the rental unit at 2:30 p.m. on April 13, 2013. She testified that she handed a copy of the landlords' dispute resolution hearing package to the tenant on May 6, 2013.

Analysis – Service of Documents

I am satisfied that the female landlord served the landlords' dispute resolution hearing package to the tenant in accordance with the *Act*.

The female landlord maintained that her service of the 1 Month Notice to the tenant's stepfather at the tenant's rental unit satisfied the service requirements for this document. She said that the *Act* allowed her to serve the 1 Month Notice to anyone 19 years of age or older at the tenant's rental unit. She said that the tenant's mother was also in the rental unit at that time, although she gave the 1 Month Notice to the tenant's stepfather. Both landlords said that they did not believe that the tenant was in the rental unit when the female landlord served the 1 Month Notice.

Section 88 of the *Act* reads in part as follows:

88 *All documents, other than those referred to in section 89 [special rules for certain documents], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:*

- (a) by leaving a copy with the person;...*
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides...*
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;*
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;*
- (f) by leaving a copy in a mail box or mail slot for the address at which the person resides...*
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides...;*
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;*
- (i) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];*
- (j) by any other means of service prescribed in the regulations...*

I could find that the female landlord had served the 1 Month Notice to the tenant if the tenant's stepfather apparently resided with the tenant (section 88(e) of the *Act*). I asked both landlords if they believed that the tenant's stepfather resided with the tenant. Initially, the female landlord responded that she did not know. However, after I questioned both her and the male landlord on this point, they both testified that the tenant's stepfather did not reside with the tenant. The male landlord said that the only time he ever saw the tenant's stepfather was when this man accepted the landlords' 1 Month Notice from the female landlord. Based on the landlords' sworn testimony, I find that the landlords did not serve the 1 Month Notice to the tenant in accordance with section 88(e) of the *Act* as the tenant's stepfather does not reside in the rental unit with the tenant. Therefore, I find that the landlords have not served the tenant with the 1 Month Notice in accordance with section 88 of the *Act*. As such, I dismiss the landlords' application for an Order of Possession based on the 1 Month Notice, which is of no

effect. As they have been unsuccessful in their application, I dismiss the landlords' application to recover their filing fee.

In coming to this decision, I note that this decision does not affect the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) of May 1, 2013. Consideration of the landlords' 10 Day Notice was not part of their application and was not before me at this hearing.

Conclusion

I dismiss the landlords' application for an Order of Possession based on the 1 Month Notice of April 13, 2013, without leave to reapply. The 1 Month Notice is set aside and this tenancy continues. As the landlords have been unsuccessful in their application, I dismiss their application to recover their filing fee from the tenant 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: May 31, 2013

Residential Tenancy Branch

