



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ARAGON DEVELOPMENT CORP.
and [tenant name suppressed to protect privacy]

DIRECT REQUEST DECISION

Dispute Codes : OPR, MNR

Introduction

The Hearing proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of the Act, and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession and a monetary order for rental arrears.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on December 11, 2013, at 12:29 p.m., the landlord attempted to serve the tenant in person, but the tenant refused. The landlord verified that the Notice of Direct Request Proceeding was then served on the tenant by posting the Notice of Direct request on the tenant's door. Posted Notices are deemed to be served in three days.

Based on the written submissions of the landlord, I find the tenant has been duly served with the Dispute Resolution Direct Request Proceeding documents.

Preliminary Issue

Sections 88 and 89 of the Act determine the method of service for documents. The Tenant has applied for a Monetary Order under section 67 of the Act which requires that the landlord serve the tenant with hearing documents as set out under Section 89(1).

This requires service in one of the following ways:

- (a) by leaving a copy with the person, (personal service);*
- (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].

In this case the landlord served the hearing documents by posting it on the tenant's door and this is not in compliance with any of the above methods listed under section 89(1) of the Act required to seek an order for monetary compensation. Therefore it is not possible to proceed with the monetary claim portion of the landlord's application.

However Section 89(2) of the Act does allow an application for an Order of Possession pursuant to section 55 of the Act, to be served by "attaching a copy to a door or other conspicuous place at the address at which the tenant resides".

Therefore, I find that the portion of this application pertaining to the Order of Possession, has been duly served under the Act and the issue of whether or not the landlord is entitled to an Order of Possession will be determined.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession based on the Ten Day Notice to End Tenancy for Unpaid Rent?

Proof of Service of 10 Day Notice to End Tenancy

The landlord submitted a copy of the Notice to End Tenancy for Unpaid Rent and a "Proof of Service" form stating that the Notice was served to the tenant in person on December 2, 2013 at 1:00 p.m.

The purpose of serving documents under the Act is to notify the person of a failure to comply with the Act and of their rights in response. The landlord, seeking to end the tenancy has the burden of proving that the tenant was served with the Notice to End Tenancy and I find that the landlord has met this burden.

Analysis

Submitted into evidence was a copy of the tenancy agreement signed on September 9, 2013 showing rent set at \$1,650.00 per month with a Notice of Rent Increase setting the rent at \$1,660.00. Although no copy of the tenant's rent account ledger was submitted, the landlord indicated in the Application for Direct Request that the tenant had accrued rental arrears of \$3,320.00 for November and December 2013.

Based on the evidence submitted by the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent. The tenant has not paid all of the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective

date of the Notice. Given the above facts I find that the landlord is entitled to an Order of Possession.

I hereby issue an Order of Possession in favour of the landlord effective two days after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

Due to the manner of service of the landlord's application and Notice of Direct Request, the portion of the landlord's application seeking monetary compensation is hereby dismissed with leave to reapply.

Conclusion

The landlord is partly successful in the application and is granted an Order of Possession. The portion of the landlord's application seeking a monetary order is dismissed with leave to reapply due to noncompliant service of the Notice of the Direct Request.

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: December 19, 2013

Residential Tenancy Branch

