



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This reconvened 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 her filing fee for this application from the tenant pursuant to section 72.

As reported in my Interim Decision of February 6, 2014, I adjourned the original hearing of February 5, 2014. I did so because the Residential Tenancy Branch (the RTB) appeared to have scheduled a consideration of the landlord's application for both February 5, 2014 and February 25, 2014. At the original hearing, only the landlord's agent connected with the teleconference hearing.

Background Information- Original Hearing

As was noted in my Interim Decision, the landlord's application was for an Order of Possession for unpaid rent. However, the only notice to end tenancy issued by the landlord was a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice). At the original hearing, the landlord's agent said that she understood that the landlord had given this 1 Month Notice to the tenant on November 30, 2013. The landlord was not available at the original hearing and there was no record that the landlord had submitted any Proof of Service document relating to her hand delivery of the 1 Month Notice to the tenant on November 30, 2013, as maintained by the agent.

In my Interim Decision, I also noted that the landlord's agent did not have information that would verify the landlord's service of her dispute resolution hearing package to the tenants. I included the following comments in my Interim Decision regarding the landlord's service of documents to the tenants:

...While the agent should have had information regarding the service of documents available to her, more information regarding such matters may very

well have been provided as part of the landlord's written evidence. I was not certain that I had all of the documentation from the file available due to the confusion surrounding the double-scheduling of this hearing. It was also most unusual that the RTB would schedule the same application to be heard on two separate occasions over the course of a three-week period. The landlord was not available to provide direct testimony as to which Notices she had received from the RTB, which Notices of Dispute Resolution Hearing were served to the tenant, and what was included in the hearing package sent to the tenant...

Although I could have made a decision on the basis of the information regarding service of the above documents to the tenants, I decided to adjourn the landlord's application to February 25, 2014. I did so as there may have been an element of confusion raised by the RTB's dual scheduling of the consideration of the landlord's application.

In my Interim Decision, I ordered the hearing reconvened to February 25, 2014 at 9:00 a.m. I also ordered the Landlord to serve the attached Notices of Hearing and all other required documents to the tenants within three days of receiving my Interim Decision.

Issues(s) to be Decided

Has the landlord served documents to the tenants in accordance with the *Act*?

Background and Evidence

This periodic tenancy commenced on October 1, 2013. Monthly rent is set at \$1,100.00, payable in advance on the first of each month.

The landlord applied for an end to this tenancy and an Order of Possession for unpaid rent. However, the landlord's agent confirmed that the landlord had not issued a 10 Day Notice to End Tenancy for Unpaid Rent (a 10 Day Notice). The landlord did enter into written evidence a copy of the 1 Month Notice. At the initial hearing, the landlord's agent gave sworn testimony that the tenants have not paid rent for November or December 2013, or January or February 2014. The tenants' agent said that the tenants' February 2014 rent remains owing, but they intend to pay their rent for February very soon.

Preliminary Issue - Service of Documents

Section 89(1) of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution for a monetary Order.

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;...*

The landlord's agent testified that the landlord (or her husband) handed Tenant Ti C., a copy of the landlord's dispute resolution hearing package, including the February 25, 2014 Notice of Dispute Resolution Hearing, on February 13, 2014. She said that when this Tenant refused to accept the hearing package, the landlord posted the package on the tenants' door. The tenants' agent testified that the only document handed to either tenant was a copy of the Notice of Dispute Resolution Hearing on February 13, 2014. She said that no other document was provided to the tenants and that nothing was posted on their door.

At the reconvened hearing, I advised the parties of my finding that the landlord's agent has not demonstrated to the extent required that the landlord's dispute resolution hearing package has been provided to the tenants in accordance with the *Act*. While I accept that the Notice of Dispute Resolution Hearing was handed to one of the tenants, this does not satisfy the requirement that the full hearing package, including a copy of the landlord's application for dispute resolution and accompanying documents were served to the tenants in accordance with the *Act*. Once more, the landlord's failure to provide any direct evidence from the person who allegedly served the documents to the tenants prevents me from finding that these documents in their entirety were served to the tenants. I dismiss the landlord's application for a monetary award with leave to reapply.

Section 89(2) of the *Act* outlines the methods whereby an application for an order of possession can be served to a tenant.

(2) An application by a landlord under section 55 [order of possession for the landlord],... must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;*

(b) by sending a copy by registered mail to the address at which the tenant resides;

(c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;

(d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;...

For the same reasons as stated above, I also find that the landlord has not demonstrated that the tenants have been served with the landlord's dispute resolution hearing package in its entirety as required by section 89(2) of the *Act*. I dismiss the landlord's application for an end to this tenancy for unpaid rent as service has not been demonstrated and no 10 Day Notice has been issued to the tenants.

In addition, I have reviewed the status of the only notice to end tenancy entered into written evidence by the landlord, the 1 Month Notice, as this would seem to remain an issue of contention with respect to this tenancy. 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...

The landlord's agent testified that the landlord handed one of the tenants the 1 Month Notice on November 30, 2013. The tenant's agent testified that the tenants did not receive that 1 Month Notice. In the absence of any direct evidence from the person who allegedly served the 1 Month Notice to the tenants, I am not satisfied that the landlord has demonstrated that the 1 Month Notice was served in accordance with the *Act*. I find that the landlord's 1 Month Notice is of no force or effect.

As the landlord has been unsuccessful in this application, the landlord bears responsibility for the filing fee for her application.

Conclusion

I dismiss the landlord's application for an Order of Possession based on the 1 Month Notice of November 30, 2013, without leave to reapply. This tenancy continues and the 1 Month Notice is of no force or effect.

I dismiss the landlord's application for a monetary Order with leave to reapply.

As the landlord has been unsuccessful in her application, I dismiss her application to recover her 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: February 25, 2014

Residential Tenancy Branch

