



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

On February 27, 2014, I issued a decision with respect to an application by the landlords by way of the Residential Tenancy Branch's (the RTB's) Direct Request Proceedings. In that Ex Parte hearing of the landlords' application, I allowed their application for an end to this tenancy and an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) they had issued to the tenants.

For the reasons outlined in the following portion of my February 27, 2014 decision (the original decision), I adjourned the landlords' application for a monetary award for unpaid rent:

...I have also considered the landlords' application for a monetary award in the amount of \$3,150.00. I find that the landlords have not set out sufficient information to support the amount of their claim for unpaid rent for January and February 2014. The landlords did not complete a monetary order worksheet, nor did the landlords provide any tenant rental ledger, account statement or any other method of confirming that the tenants continue to owe the full \$3,150.00 for these two months. The landlords have not provided a copy of a receipt or a cancelled cheque or money order for the tenants' apparent payment of portions of their January 2014 rent. The landlords noted in the Details of the Dispute in their application that the tenants paid \$400.00 in cash in January 2014. They also referred to a further unspecified cash payment in mid-February 2014. Although they referenced an NSF cheque for \$1,200.00 they received on February 17, 2014, they provided few details as to how much remains owing towards this tenancy.

Without clarification of these issues, the landlords have not met the onus placed on them to supply documents that would prove the amount of rent owing (e.g., rent ledger, receipt book) in support of their application for a monetary Order. While some rent would appear to remain owing, given the NSF cheque

referenced by the landlords, the exact amount of the landlords' entitlement to a monetary Order remains unclear. Under these circumstances, I find that I am unable to consider the landlords' application for a monetary Order against the tenants by way of a Direct Request proceeding.

I adjourn the landlords' application for a monetary award to be reconvened as a participatory hearing. Should additional rent become owing in the interim, the landlords are at liberty to submit a written amendment to their application for dispute resolution with respect to the amount of their requested monetary Order.

I attached Notices of the Reconvened Hearing and advised the parties that it was the responsibility of the landlords to serve these Notices to the tenants within three days of receiving my original decision.

Issues(s) to be Decided

Have the landlords served the Notices of the Reconvened Hearing to the tenants in accordance with the *Act*?

Background and Evidence

The male landlord (the landlord) entered written evidence and sworn testimony that the tenants abandoned the rental unit by February 28, 2014, the day after I issued my original decision. By that time, neither the tenants nor the landlords had received my original decision.

The landlord said that he left the Notices of Reconvened Hearing advising the tenants of the current hearing in the location where the tenants picked up their mail during their tenancy. He said that they still had keys to access this mail area at that time, even though they had by then ended their tenancy and vacated the rental unit. He testified that the Notices of Reconvened Hearing were missing, so the tenant or tenants must have retrieved these Notices. The landlord said that he had no other way to serve the tenants with notice of this hearing because they abandoned the rental unit without leaving the landlords with their forwarding address.

Analysis

Section 89 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;*
- (e) as ordered by the director under section 71(1) [director's orders: delivery and service of document]...*

Based on the landlord's sworn testimony and written evidence, the tenants were no longer residing at the rental unit when the landlords received the Notices of Reconvened Hearing. Even if they were residing in the rental unit at that time, the landlords have not served the tenants in one of the ways outlined above. I am not satisfied that the tenants were properly served with the Notices of Reconvened Hearing in accordance with the *Act*.

Conclusion

I dismiss the landlords' application for a monetary Order 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: April 23, 2014

Residential Tenancy Branch

