



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Caldera Properties Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application.

The landlord company was represented at the hearing by 2 agents, one being an employee at the head office who filed the application for dispute resolution and the other being the on-site manager of the rental property. The landlord's agent also had a witness who testified under affirmation that he served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and his wife wrote on the copy that it was served on June 4, 2014. He also served the hearing package documents but does not recall the date. Two tenants reside in the rental unit and the package was given to one of them, but not the tenant named in the application.

Analysis

In the circumstances, I am not satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*. The *Act* requires that the hearing package be served on the tenant within 3 days of making the application. The person who served the package testified that he served another person and does not recall the date. Also, the *Act* specifies service requirements as set out below, and I've underlined the portions relevant to this dispute:

Special rules for certain documents

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, 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 documents].

(2) An application by a landlord under section 55 [order of possession for the landlord], 56 [application for order ending tenancy early] or 56.1 [order of possession: tenancy frustrated] 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;

(e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].

A landlord can serve an application for an Order of Possession to a tenant by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant. However, an application for any other relief, including a monetary order for unpaid rent or utilities, cannot be served in that manner. Therefore, I dismiss the landlord's application with leave to reapply.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed 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: July 08, 2014

Residential Tenancy Branch

