



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNR, OPR, FF

Introduction

This Dispute Resolution hearing was held to deal with an Application by the landlord for a monetary order and an Order of Possession. The landlord was in attendance. The tenant did not appear.

Preliminary Issue

The landlord testified that the hearing package was served on the tenant by posting it on the tenant's door. The landlord testified that he could not serve by registered mail as the tenant does not have a delivery address or box number for Canada Post.

Sections 88 and 89 of the Act determine the required method of service for documents.

Because the landlord had applied for a Monetary Order under section 67 of the Act, there is a mandatory requirement that the landlord serve the tenant as set out under **section 89(1) of the Act**. This section states that the landlord must serve in one of the following ways:

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

(c) **by sending a copy by registered mail to the address at which the person resides**

In this case evidence shows that the documents were left at the door and this manner of service is not in compliance with section 88 of the Act, which applies when an applicant is seeking a monetary order.

However **section 89(2)** does permit an application by a landlord under section 55 [**order of possession for the landlord**], (my emphasis). An Application seeking an Order of Possession is permitted to be served by:

- leaving a copy at the tenant's residence with an adult who apparently resides with the tenant,

- by attaching a copy to a door or other conspicuous place at the address at which the tenant resides,
- in person
- by regular or registered mail.

In this instance, because the landlord left the Notice of Hearing at the tenant's door, I find that this method of service would only comply with the Act for the purpose of the Order of Possession, and is not adequate service to proceed with the part of the application for the monetary order.

Having found that the landlord has failed to prove adequate service of the Notice of Hearing and Application for Dispute Resolution, for the monetary order, I find that the portion of landlord's application dealing with the monetary claim must be dismissed and I do so with leave to reapply at a later date, should the landlord wish to do so.

Issue(s) to be Decided

The remaining issue to be determined is whether or not the landlord is entitled to an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent

Background and Evidence

The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy dated September 3, 2014. The landlord testified that the tenant did not dispute the Notice and did not pay the arrears. The landlord stated that the tenant has now accrued arrears of \$3,600.00 to date and remains in the rental unit.

The landlord seeks an Order of Possession.

Analysis

Based on the testimony of the landlord, I find that the landlord served the tenant with a Notice to End Tenancy for Unpaid Rent and the tenant has not paid the outstanding rent nor did the tenant apply to dispute the Notice. Therefore the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. Based on 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 immediately after service on the tenant. This can be served in person, by mail or posted on the door. Should it be necessary, the order may be filed in the Supreme Court and enforced as an order of that Court.

I hereby grant the Landlord the cost of the application in the amount of \$50.00 which the landlord can retain from the tenant's security deposit.

The monetary portion of the landlord's application is dismissed with leave to reapply.

Conclusion

The landlord is partly successful in the claim and is granted an order of possession. The monetary claim portion of the landlord's application is dismissed with leave due to a service deficiency.

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: November 13, 2014

Residential Tenancy Branch

