



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Lombardy Management Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, OPR, MNSD, FF

Introduction

This was an application for an Order for Possession and a monetary Order pursuant to a 10 Day Notice to end the Tenancy dated November 6, 2014. Only the landlord's agent LH attended the hearing.

Issue(s) to be Decided

Is the landlord entitled to an Order for Possession and a monetary Order notwithstanding that the tenant passed away prior to service of the documents?

Background and Evidence

LH testified that the Notice to End the tenancy was posted to the tenant's residential door on November 6, 2014 and the Dispute Package sent by registered mail to the same address on November 20, 2014. LH testified that the tenant passed away on September 20, 2014 and no one resided in the unit since that date. LH testified that she believed the tenant's granddaughter was the deceased's representative and had a mailbox key but she had no proof of this. Canada Post's web site indicated that the mail was not picked up and was being returned to the sender as of the date of the hearing.

Analysis

Residential Tenancy Policy Guideline 23 provides as follows:

Naming an Estate of a Person Who Has Died

Where a party makes an application for arbitration and the respondent has died, or where a party representing a person who has died (the "decedent") makes an application, the name used must be that of the personal representative of the decedent's estate (collectively, the "estate"). The personal representative may be either the person who has been named as executor in the decedent's will, or the person who has been appointed to administer the estate of a decedent who has not left a will, or a person named in an Order of Probate.

The proper manner of naming the estate is as follows: John Smith, Executor (or Administrator) of the Estate of Mary Jones, Deceased.

Where the applicant names the decedent, the application must be served on the personal representative of the decedent, and at the hearing the application may be amended to properly name the estate. Formal consent to the amendment may not be required if evidence of the correct naming of the estate is provided.

Section 91 of the Act governs how documents such as the notice to End the Tenancy must be served:

How to give or serve documents generally

81 All documents, other than those referred to in section 82 [*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;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or 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 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 or, if the person is a landlord, for the address at which the person carries on business as a landlord;

Section 82 of the Act governs how applications for dispute resolution for monetary Orders must be served:

Special rules for certain documents

- 82** (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 6, 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 64 (1) *[director's orders: delivery and service of documents]*.
- (2) An application by a landlord under section 48 *[order of possession for the landlord]*, 49 *[application for order ending tenancy early]* or 49.1 *[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 64 (1) *[director's orders: delivery and service of documents]*.

As the tenant is deceased, I find that the landlord has not properly named the respondent in the or served the Notice to End the Tenancy or Application for Dispute Resolution pursuant to section 23 of the Policy Guidelines. The application cannot be amended to properly name the estate of the deceased as the landlord had not

presented any evidence as to the identify of the estate nor who the legal representative of the estate is. Furthermore neither the Notice to End the tenancy nor the Application have been served in accordance with sections 81 or 82 of the Act as the respondent who is deceased no longer “resides” in the unit and the legal representative of the deceased was not served. I therefore must dismiss with leave all the landlord’s applications.

Conclusion

I have dismissed all the landlord’s applications herein with leave to reapply. There will not be any recovery of the filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: December 16, 2014

Residential Tenancy Branch

