



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlords' 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;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although it lasted approximately 32 minutes. The landlord SHJ ("landlord") attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord confirmed that he has authority to act as agent for the other landlord named in this application, JSP (collectively "landlords").

Preliminary Issue – Landlords' Service of the Application for Dispute Resolution

The landlord gave sworn testimony that he served the landlords' Application for Dispute Resolution Hearing Package ("Application") on December 19, 2014, by way of registered mail. The landlords provided a Canada Post receipt and tracking number as proof of service with their Application. The landlord testified that the Application was sent to the rental unit address and that address is contained on the Canada Post receipt.

The landlord testified that the tenant abandoned the rental unit on December 6, 2014. Therefore, serving the Application to the rental unit on December 19, 2014, would not provide notice to the tenant, of the landlords' Application.

The landlord testified that he made an appointment to meet the tenant at the rental unit on December 6, 2014, but the tenant did not show up. The landlord waited at the rental unit, tried calling the tenant's cell phone, and asked the neighbours about the tenant. The neighbours advised the landlord that the tenant had moved out of the rental unit as of December 6, 2014. December 6 was also the effective date on the 10 Day Notice, that the landlord served the tenant on November 23, 2014. The landlord testified that he changed the locks and took back possession of the rental unit on December 6, 2014. The landlord indicated that there was "clear evidence" that the tenant had left he rental unit and there were moving boxes with some items left behind.

On December 7, 2014, the tenant emailed the landlord and the landlord provided the tenant with the PIN access number to allow the tenant to remove his belongings, which he agreed would be done by December 13, 2014. The landlord stated that he provided additional time to December 15, 17 and 18 for the tenant to remove his belongings. The landlord indicated that he advised the tenant via phone calls, text messages, emails, and a letter on the door, that he needed to vacate the rental unit. The landlord testified that he called the police on December 18, 2014, because the tenant became aggressive when told to leave, which is the last time he saw the tenant in the rental unit. The landlord stated that the tenant was given December 18, 2014, as a final date to move his belongings, the landlords offered to help him move to a new place, and the landlords were required to clean up the place for their family. The police advised the landlord to follow the *Act*, as the police could not force the tenant to leave the rental unit.

The landlord testified that he was advised via email, by a caretaker for the rental unit, that the smoke alarm in the rental unit was activated on December 30, 2014. The caretaker advised the landlord that she knocked on the door, no one opened the door but someone answered from inside. After waiting for approximately half an hour, the caretaker left the rental unit. The landlord maintained that it was the tenant who answered the caretaker from inside the rental unit. The caretaker did not testify at this hearing to provide any evidence. The landlord stated that the police called him to inquire as to the tenant's car lease loan on December 31, 2014.

The landlord indicated that he had not contacted the tenant or checked to see whether the tenant was still residing in the rental unit, since December 18, 2014. He indicated that he was sick for some time, he was out of town and he had just started school, so he was unable to check as to whether the tenant was in the rental unit.

Analysis

Section 89 of the *Act* permits service of the landlords' Application by way of registered mail. However, section 89(1)(c) and 89(2)(b) of the *Act* require service to the "address at which the tenant/person resides" (emphasis added).

The landlord indicated that the tenant abandoned the rental unit on December 6, 2014, and he changed the locks the same day. He then indicated that he allowed the tenant access to the rental unit to move his belongings from December 7 to 18, 2014. The landlord then stated that he did not check the rental unit after December 18, 2014, to see whether the tenant had vacated. The landlord mailed his application on December 19, 2014, which is deemed to be received after 5 days (ie. on December 24, 2014), as per section 90 of the *Act*. However, the landlord has no evidence that the tenant was still residing in the rental unit after December 18, 2014. The landlord indicated that an incident occurred on December 30, 2014, where the smoke alarm was activated in the rental unit, but did not provide any witness or documentary proof to indicate that this tenant was still in the rental unit at that time, as no one answered the door and only a voice answered from inside. The landlord did not provide the email that he received from the caretaker about this incident. The landlord indicated that he provided a letter and emails to the tenant, asking him to vacate, but he did not provide these documents with his Application. The landlord states that he received a phone call regarding the tenant on December 31, 2014, but this does not demonstrate that the tenant was still residing in the rental unit at that time. The landlord did not check to see whether the tenant was still in the rental unit between December 19, 2014 and this hearing date of January 19, 2014, one month later.

The tenant did not attend this hearing to provide evidence. The tracking number on the Canada Post website indicates that the item was accepted at the post office on December 19, 2014, but it did not go out for delivery until December 31, 2014, which was unsuccessful. The Canada Post on-line tracking system reveals that a final notice was sent on January 11, 2014 and then the package would be returned to its sender after 10 days if it was not claimed. The landlord indicated that the tenant was aware of the hearing, as he apologized to the landlord by way of text messages and emails. However, the landlord did not provide this evidence with his Application. The landlord stated that he was not given a forwarding address by the tenant and he did not know how to find him.

On a balance of probabilities, and for the reasons outlined above, I find that the tenant was not served with the landlords' Application at the address at which he resides, as required by section 89 of the *Act*. The tenant is required to have notice of this

Application in order to have an opportunity to respond. There are a number of other service methods under section 89 of the Act, as well as opportunities for substituted service, if the landlord requires. Section 89 of the Act is reproduced below, for the landlords' reference:

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]...*

Accordingly, the landlords' entire application is dismissed with leave to reapply. The landlord must serve any future applications in accordance with section 89 of the Act.

Conclusion

The landlords' entire application is dismissed with leave to reapply. The landlords must serve any future applications in accordance with section 89 of the *Act*.

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: January 19, 2015

Residential Tenancy Branch

