



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, 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 recover the filing fee for this application from the tenants, pursuant to section 72.

The tenants did not attend this hearing, although it lasted approximately 41 minutes. The landlord and his two agents, "IK" and "GK" attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord and GK connected to the hearing late at 9:36 a.m., while IK connected to the hearing at 9:30 a.m.

IK is the landlord's son and GK is the landlord's daughter. The landlord testified that both IK and GK were authorized to act as agents and speak on his behalf at this hearing. The landlord confirmed that he did not speak English well and that his agents would be providing language translation to him at this hearing.

Preliminary Issue – Landlord's Service of the Application for Dispute Resolution

The landlord and GK were not present at the hearing when IK testified that he witnessed the landlord personally serve all three tenants separately with a copy of the Application for Dispute Resolution Hearing Package ("Application") on January 12, 2015, at the rental unit. The tenants previously occupied the basement suite, while the landlord occupies the main floor of a house. The landlord and GK connected to the hearing late and initially testified that the tenants were not served with the Application at all, because they vacated the rental unit on January 12, 2015, and the landlord's Application was dated and filed on January 12, 2015. GK stated that she was present when the police attended at the rental unit on January 12, 2015, and that she walked through the rental unit with them, the tenants were not present, the tenants' belongings had been moved out and there was a lot of garbage in the rental unit. IK confirmed that the tenants

had left the rental unit without any notice to the landlord and that they did not return the keys to the rental unit when they left on January 12, 2015.

IK could then be heard advising the landlord, over the phone, that the tenants were served with the Application on January 12, 2015. The landlord and GK then testified that IK personally served the tenants with the Application on January 12, 2015. When questioned as to how they were now aware that the tenants were served on this date, GK and the landlord stated that IK told the landlord that he had personally served the tenants with the Application on January 12, 2015. When questioned as to whether the landlord was present during this service, the landlord initially indicated that he was not present and that only IK served the Application. IK then testified that the landlord was confused about the service and dates and GK stated that a long time had passed since the Application was served. The landlord and GK then stated that the landlord was confused about the service and dates. The landlord and GK then testified that both the landlord and IK were present when all three tenants were personally served with the Application on January 12, 2015.

IK then testified that the tenants were present in the rental unit during the day on January 12, 2015 and that the police attended the rental unit at night when the tenants had left. IK confirmed that the tenants were served during the day on January 12, 2015, when they were still in the rental unit. GK then stated that the police attended the rental unit on January 13, not January 12, as she stated earlier. She stated that the police attended at 1:10 p.m. on January 13, 2015. When questioned as to how she was now certain of this new date and time, GK stated that her sister had written down this date and time.

The landlord and GK indicated that they entered the rental unit and cleaned it after the tenants vacated. GK stated that the landlord had advertised the rental unit for rent the day before this hearing. IK testified that the tenants had not provided a forwarding address for service and that he was not aware of their current whereabouts.

Analysis

Section 89 of the *Act* permits service of the landlord's Application by way of leaving a copy with the tenants.

I did not find the evidence of the landlord, GK or IK to be credible. There is conflicting testimony from three related family members regarding service of the landlord's Application. During the hearing, the three members were conversing with each other, as GK and the landlord joined the hearing late and did not hear the initial evidence provided by IK, regarding service. There are three different versions regarding service of the Application on the three tenants. One version is that the tenants were never served with the Application. The second version is that the landlord

personally served the tenants with IK witnessing this service. The third version is that IK personally served the tenants alone, without the landlord present.

GK, IK and the landlord all stated that the tenants had left the rental unit by January 12, 2015. Initially, GK, IK and the landlord stated that the police attended at the rental unit on January 12, 2015 and walked through the rental unit which was empty of the tenants' belongings. Later, it was stated that the police attended at night on January 12, 2015, and the tenants were served during the day on that same date. Then, it was indicated that the police actually attended during the day at 1:10 p.m. on January 13, and that the tenants were served on January 12, 2015, while they were still in the rental unit. Yet, GK, IK and the landlord all stated that the tenants left without giving them any notice and did not return the keys to the rental unit.

The tenants did not attend this hearing to provide evidence. The landlord stated that he was not given a forwarding address by the tenants and he did not know how to find the tenants.

On a balance of probabilities, and for the reasons outlined above, I find that the tenants were not personally served with the landlord's Application, as per section 89 of the *Act*. The tenants are 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 landlord's 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 landlord's entire Application is dismissed with leave to reapply. The landlord 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: February 03, 2015

Residential Tenancy Branch

