



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with the landlord's 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;
- authorization to recover the filing fee for this application from the respondents, pursuant to section 72.

The two respondents, "TC" and "RB," did not attend this hearing, which lasted approximately 33 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. "JL" testified as a witness at this hearing on behalf of the landlord.

Preliminary Issue – Service of Landlord's Application

The landlord testified that he served both respondents with the landlord's application for dispute resolution hearing package ("Application") on March 12, 2015, by way of registered mail to the rental unit address. The landlord provided two Canada Post receipts and tracking numbers as proof of service, with his Application. The landlord testified that both Canada Post packages were returned to him. The Canada Post website indicates the following for both packages: "Recipient not located at address provided. Item being returned to sender."

The landlord testified that he assumes that the two respondents are still residing in the rental unit because the property looks the same when he drove by recently. The landlord stated that he did not enter the rental unit to confirm whether the two respondents are still residing there.

The landlord testified that this tenancy began on July 15, 2007. The landlord provided a copy of the tenancy agreement with his Application. The tenancy agreement names “DC” as a tenant. DC signed the tenancy agreement. Another person, “DH,” also signed the tenancy agreement as a tenant, but she is not named as a tenant party at the beginning of the tenancy agreement.

The landlord testified that TC, the respondent named in this Application, took over DC’s tenancy when DC passed away in 2012. The landlord stated that RB, the other tenant named in this Application, took over DH’s tenancy when DH moved out on December 6, 2014. The landlord confirmed that no new written tenancy agreement was entered into when the two respondents began occupying the rental unit. The landlord stated that there are two other occupants currently in the rental unit with the two respondents. The landlord indicated that there have been approximately eight different tenants in the rental unit in the last two years.

Analysis – Service of Landlord’s Application

Section 89 of the *Act* outlines the methods of service for an application for dispute resolution, which reads in part as follows:

89 (1) An application for dispute resolution ..., 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;...*
- (c) by sending a copy by registered mail to the address at which the person resides ...;*
- (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], ...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].

The landlord has failed to sufficiently demonstrate that the two respondents named in this Application were served in accordance with section 89 of the *Act*. Both Canada Post packages were returned to sender because the recipients could not be located. The landlord has not entered the rental unit to determine whether the tenants still reside there. The landlord has failed to provide any written documentary evidence, including rent receipts, cheque stubs or other evidence from the respondents, indicating that they still resided in the rental unit at the time the landlord sent them the dispute resolution hearing packages by registered mail. The landlord has only provided a rent ledger, dated March 12, 2015, more than one month prior to this hearing date, indicating the name of one respondent, TC, on the ledger.

For the above reasons, I am not satisfied that the two respondents were served with the landlord's Application at the address at which they reside, in accordance with section 89 of the *Act*. Accordingly, I dismiss the landlord's entire Application with leave to reapply.

Conclusion

The landlord's entire application is 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: April 16, 2015

Residential Tenancy Branch

