



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNSD, MNR

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession and an order permitting the landlord to keep all or part of the security deposit or pet damage deposit.

The landlord attended the hearing accompanied by an agent. The tenant also attended.

During the course of the hearing the landlord's agent advised that the application for an order permitting the landlord to keep the security deposit is in relation to unpaid rent, and I amended the application to include an application for an order for monetary compensation for unpaid rent.

The tenant advised that he was served with a Notice of Dispute Resolution Hearing, but did not receive a copy of an application for dispute resolution or any other documents. The tenant attended the hearing not knowing what the application by the landlord is, and seeks time to prepare a defense.

The landlord advised that a hearing package, containing a Notice of Dispute Resolution Hearing and a Fact Sheet provided by the Residential Tenancy Branch and a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities were served upon the tenant on June 22, 2015 by taping them in an envelope to the door of the rental unit.

Analysis

The *Residential Tenancy Act* is clear with respect to the method of service acceptable:

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*].
- (3) A notice under section 94.21 [*notice of administrative penalty*] must be given in a manner referred to in subsection (1).

In this case, the landlord advised that the tenant was served with a hearing package on June 22, 2015 in accordance with Section 89 (2) (d), but did not mention the inclusion of a copy of the Landlord Application for Dispute Resolution. The tenant denies receiving such an application. Further, where a landlord claims monetary compensation, that type of application must be served in accordance with Section 89 (1) and none of the methods for service under that subsection includes posting the documents to the door of the rental unit.

In the circumstances, I find that the landlord has failed to establish that the tenant was served in accordance with the *Act*, thereby failing to put the tenant on notice of what the landlord seeks. Therefore, I hereby dismiss the landlord's application with leave to reapply.

I make no findings of fact or law with respect to the merits of the landlord's application.

Conclusion

For the reasons set out above, the landlord's application is hereby 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: August 20, 2015

Residential Tenancy Branch

