



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, OPR, OPC, MNR, MNSD, FF

Introduction

In the first application the tenant seeks to cancel a one month Notice to End Tenancy for cause and a ten day Notice to End Tenancy for unpaid rent.

In the second application the landlord seeks an order of possession pursuant to a one month Notice to End Tenancy dated August 24, 2015 and a ten day Notice to End Tenancy for unpaid rent dated November 11, 2015. He also seeks a monetary award for unpaid rent and the filing fee.

The tenant did not attend the hearing within ten minutes after its scheduled start time.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show that the tenant has been served with the landlord's application? Does it show that the landlord is entitled to an order of possession or a monetary award as claimed?

Background and Evidence

The rental unit is a two bedroom basement suite in a house. The tenancy started August 1, 2015 for a one year fixed term. The rent is \$1150.00 per month, due on the first of each month, in advance. The tenant paid a \$575.00 security deposit at the start of the tenancy but the landlord says that it has been applied against September rent, by agreement with the tenant.

The landlord testified that he served the one month Notice on August 24, 2015 by handing it to Mr. S.M., an adult who lives with the tenant at the premises. He says that also served the ten day Notice by handing it to Mr. S.M. at the premises on November 11, 2015. He has filed a Proof of Service document wherein a witness confirmed that service.

The landlord testifies that he served the application for dispute resolution and notice of hearing on the tenant by serving Mr. S.M. at the premises on November 18, 2015.

He says the tenant continues to reside at the premises and has not paid rent since October.

Analysis

The tenant has failed to attend and pursue her claim. The landlord attended and was ready to respond to that claim. In such circumstances, the tenant's application is dismissed.

When a respondent fails to attend a hearing it is incumbent on the applicant, the landlord in this case to prove service of the relevant documents.

Section 88 of the *Residential Tenancy Act* (the “RTA”) provides that documents like Notices may be served on a tenant by serving an adult person who apparently resides at the premises with the tenant. I find that the landlord has effectively served the tenant with the two Notices by service Mr. S.M., and adult person who resides at the premises with the tenant.

Section 89 of the *RTA* makes provision for service of applications for dispute resolution. It provides:

- 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).

(emphasis added)

As can be seen, subsection (1) does not provide for service of an application by serving an adult who apparently resides with the tenant, but an application for an order of possession does permit such a method of service.

It follows that the landlord's application for an order of possession has been properly served on the tenant by service on Mr. S.M., but his application for a monetary award has not.

As a result, on the evidence presented, I find that this tenancy ended as a result of the one month Notice to End Tenancy on September 30, 2015 and that the landlord is entitled to an order of possession.

I dismiss the landlord's claim for a monetary award due to lack of proof of appropriate service and I grant him leave to re-apply against the tenant for a monetary award.

Conclusion

The landlord will have an order of possession.

The landlord is entitled to recover the \$50.00 filing fee from the tenant. There will be a monetary order against the tenant in the amount of \$50.00.

This decision was rendered orally at hearing and 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 06, 2016

Residential Tenancy Branch

