



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 was convened in response to the an Application for Dispute Resolution in which the Applicants applied for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss, and to recover the fee for filing this Application for Dispute Resolution.

Preliminary Matter #1

The Applicant stated that on June 03, 2016 the Application for Dispute Resolution, the Notice of Hearing and documents submitted with the Application for Dispute Resolution were personally served to the Respondent with the initials "D.M."

The Applicant stated that on June 03, 2016 the Application for Dispute Resolution, the Notice of Hearing and documents submitted with the Application for Dispute Resolution were served to the Respondent with the initials "C.O." by leaving them with the Respondent with the initials "D.M.", who is an adult who lives at the rental unit.

The purpose of serving the Application for Dispute Resolution and the Notice of Hearing is to notify respondents that a dispute resolution proceeding has been initiated and to give them the opportunity to respond to the claims being made. When a party files an Application for Dispute Resolution in which the party applies for a monetary Order, the applicant has the burden of proving that each respondent was served with the Application for Dispute Resolution in compliance with section 89(1) of the *Residential Tenancy Act (Act)*.

Section 89(1) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution 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) by sending a copy by registered mail to a forwarding address provided by the tenant;
or

(e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

On the basis of the testimony of the Applicant and in the absence of evidence to the contrary I find that the Respondent with the initials "D.M." was personally served with the Application for Dispute Resolution and the Notice of Hearing, pursuant to section 89(1)(a) of the *Act*. I therefore find that I am able to consider the application for a monetary Order naming this individual.

The Applicant submitted no evidence to show that the Respondent with the initials "C.O." was personally served with the Application for Dispute Resolution or Notice of Hearing and I therefore cannot conclude that he was served in accordance with section 89(1)(a) of the *Act*.

The Applicant submitted no evidence that the Application for Dispute Resolution was mailed to the Respondent with the initials "C.O." and I cannot, therefore, conclude that he was served in accordance with section 89(1)(c) or 89(1)(d) of the *Act*.

There is no evidence that the director authorized the Applicant to serve the Application for Dispute Resolution to the Respondent with the initials "C.O." in an alternate manner, therefore I find that he was not served in accordance with section 89(1)(e) of the *Act*.

The Applicant submitted no evidence to cause me to conclude that the Respondent with the initials "C.O." received the Application for Dispute Resolution, therefore I cannot conclude that the Application has been sufficiently served to him pursuant to sections 71(2)(b) or 71(2)(c) of the *Act*

As I am unable to conclude that the Respondent with the initials "C.O." has been served with the Application for Dispute Resolution and the Notice of Hearing for the purposes of a monetary Order, I am unable to consider the application for a monetary Order naming the Respondent with the initials "C.O.".

When a party files an Application for Dispute Resolution in which the party is seeking an Order of Possession the applicant has the burden of proving that the respondent was served with the Application for Dispute Resolution in compliance with section 89(2) of the *Act*.

Section 89(2) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution 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; or

(e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

Based on the testimony of the Landlord and in the absence of evidence to the contrary, I find that the Respondent with the initials "D.M." was served with the Application for Dispute Resolution and the Notice of Hearing pursuant to section 89(2)(a) of the *Act*.

Based on the testimony of the Landlord and in the absence of evidence to the contrary, I find that the Respondent with the initials "C.O." was served with the Application for Dispute Resolution and the Notice of Hearing pursuant to section 89(2)(c) of the *Act*. I based this determination on the testimony that both Respondents live at the rental unit, the Respondent with the initials "D.M." is an adult, and that the documents for the Respondent with the initials "C.O." were left with the Respondent with the initials "D.M."

As both Respondents have been properly served with the Application for Dispute Resolution and the Notice of Hearing pursuant to section 89(2) of the *Act*, I find it is appropriate to consider the application for an Order of Possession that names both Respondents.

Preliminary Matter #2

On June 07, 2016 the Applicants submitted 21 pages of evidence to the Residential Tenancy Branch. The Applicant stated that this evidence was posted on the door of the rental unit on June 08, 2016. On the basis of the undisputed testimony I find that this evidence was served in accordance with section 88 of the *Act* and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Applicant entitled to an Order of Possession and to a monetary Order for unpaid rent?

Background and Evidence

The Applicant stated that:

- he acts on behalf of the owner of the rental unit;
- the Applicants entered into a tenancy agreement with an individual he knows only by "Tim", who is not one of the names Respondents;

- he believes “Tim” vacated the rental unit sometime in December of 2015, without provided the Landlord with notice of his intent to end the tenancy;
- the Respondents moved into the rental unit on January 01, 2016;
- he believes the Respondents are subleasing the rental unit from “Tim”;
- the Applicants did not enter into a verbal or a written tenancy agreement with the Respondents;
- the Respondents provided him with a signed tenancy agreement dated March 15, 2016, which was submitted in evidence;
- the tenancy agreement provided by the Respondents names a company and a female that he does not know;
- the company named on the tenancy agreement is not the Applicant’s company;
- the female named on the tenancy company does not act as an agent for the Applicant;
- the tenancy agreement provided by the Respondents appears to be signed by the female named on the tenancy agreement;
- he has showed the tenancy agreement to the park manager and he believes the tenancy agreement is “fraudulent”;
- he has tried to get the Respondent with the initials “D.M.” to enter into a written tenancy agreement or a rent-to-own agreement, without success; and
- he believes that the Respondents do not have the right to occupy the rental unit.

Analysis

On the basis of the undisputed evidence I find that the Respondents have not entered into a written or verbal tenancy agreement with the Applicants and that the Respondents are not occupying the rental unit with the authority of the Applicants, who are the owners of the rental unit.

Section 6 of the *Act* authorizes me to resolve disputes between landlords and tenants. As the evidence does not establish that the Applicants and Respondents have entered into a tenancy agreement I cannot conclude that they have a landlord and a tenant relationship and I find that I do not have grounds to resolve the dispute between these parties.

As I do not have authority to resolve this dispute, I dismiss the Application for Dispute Resolution in its entirety.

The Applicants appear to have a tenancy agreement with a party not named in this Application for Dispute Resolution and that is the party who should be named in an Application for Dispute Resolution if there are disputes regarding that tenancy.

Conclusion

The Application for Dispute Resolution is dismissed as I do not have jurisdiction over this dispute.

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: July 07, 2016

Residential Tenancy Branch