



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, O, OPR, CNR

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlord. Both files were dealt with together.

The landlord's application is a request for an Order of Possession based on a Notice to End Tenancy for nonpayment of rent and a request for a Monetary Order for \$2500.00.

The tenant's application is a request to cancel a Notice to End Tenancy that was given for nonpayment of rent; however the tenant did not join the conference call that was scheduled for the hearing, and therefore the tenant's application will be dismissed.

Some documentary evidence and written arguments have been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the landlord the opportunity to give evidence orally.

The landlord's testimony was taken under affirmation.

Issue(s) to be Decided

The first issue I dealt with is, whether the landlord had properly served the tenant with the application for dispute resolution.

Section 89 of the Residential Tenancy Act states:

- 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*].

As you can see from the section of the Residential Tenancy Act quoted above, an application for an Order of Possession falls under section 89(2) and may be posted on the tenants door; however an application for a Monetary Order falls under section 89(1) and may not be served by posting it on the door. Therefore I am able to deal with the landlords request for an Order of Possession; however, since the application for a monetary claim has not been properly served on the tenant, that portion will be dismissed with leave to reapply.

Background and Evidence

The applicant testified that this tenancy began on May1, 2016, for a fixed term expiring October 31, 2016.

The applicant further testified that the tenant failed to pay the August 2016 rent, and therefore on August 10, 2016 a 10 day Notice to End Tenancy was posted on the tenant's door.

The applicant further testified, that the tenant has failed to comply with that notice, and has failed to pay any further rent.

The applicant is therefore requesting an Order of Possession for a soon as possible.

Analysis

Section 46 of the Residential Tenancy Act allows the landlord to end the tenancy for nonpayment of rent. That section states:

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

In this case I accept the landlord's testimony that the tenant has failed to pay rent for the months of August 2016, September 2016, and October 2016 and therefore the landlord did have the right to serve the tenant with a 10 day Notice to End Tenancy.

Further it is my finding that the notice served by the landlord does comply with section 52 of the Residential Tenancy Act.

It is my decision therefore that, since the tenant has failed to comply with the Notice to End Tenancy, the landlord has the right to an Order of Possession, pursuant to section 55 of the Residential Tenancy Act..

Conclusion

The tenant's application to cancel a Notice to End Tenancy is dismissed without leave to reapply.

I have issued an Order of Possession to the landlord that is enforceable two days after service on the tenant.

As stated previously, the monetary portion of the landlords claim 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: October 12, 2016

Residential Tenancy Branch