



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPL, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for an order of possession and for the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The landlord was assisted by a friend and his daughter.

Issues to be decided

Did the landlord serve the tenant with a valid notice to end tenancy? Is the landlord entitled to an order of possession? Is the landlord entitled to the filing fee?

Background and Evidence

The landlord is the tenant's father. The tenant moved into the rental property in July 2013. The tenant stated that since he pays the mortgage, utilities and property taxes, he owns part of the home. The tenant agreed that his father is the sole owner on title.

The landlord testified that on July 22, 2016, he visited the rental unit and served the tenant with a notice to end tenancy for landlord's use of property. The landlord stated that the door was opened by the tenant's 18 year old son who accepted the notice. The tenant denied having received the notice.

Analysis

Section 88 of the *Residential Tenancy Act* addresses:

How to give or serve documents generally

88 All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served 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 ordinary mail or 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 ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71
(1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service prescribed in the regulations.

In this case, the landlord testified that he served the notice to end tenancy by handing over the notice to the tenant's 18 year old son. The tenant denied having received the notice to end tenancy.

Based on s.88 (e), I find that the landlord served the notice to person who is not an adult and since the tenant denied having received the notice, I am unable to consider the tenant served with the notice to end tenancy.

Based on the sworn testimony of the both parties, I find that the landlord has not proven that he served the tenant with a notice to end tenancy and therefore I find that the tenant was not given the opportunity to dispute the notice.

Accordingly, the landlord's application is dismissed. Since the landlord has not proven his case, he must bear the cost of filing this application.

Conclusion

The landlord's application is dismissed.

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: November 18, 2016

Residential Tenancy Branch