



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, OPM and FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession based on a mutual agreement to end tenancy as per, section 55(2)(d);
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

The landlord JP ("the landlord") attended the hearing. The landlord confirmed he was the person named on the Residential Tenancy Agreement and on the Landlord's Application for Dispute Resolution ("Application for Dispute Resolution"). PD, the tenant named on the Application for Dispute Resolution did not attend this hearing, although I waited until 10:45 A.M. in order to enable her to connect with this teleconference hearing scheduled for 10:30 A.M. The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

This application dealt with the landlord's application for dispute resolution for an order of possession based on a Mutual Agreement to End a Tenancy ("Mutual Agreement") signed between Landlord JP and Tenant JH on October 27, 2016. This document found in the landlord's evidence package was received on November 14, 2016 by the Residential Tenancy Branch (the Branch).

JH, along with the respondent, PD, is named on the Residential Tenancy Agreement which was dated April 2, 2016. A third person, GH, was named on the tenancy as being "an adult other than the tenants occupying the rental unit."

Preliminary Issues – Service of Documents

The landlord testified that he had served the Notice of a Dispute Resolution Hearing ("Hearing Notice") via an agent, FH. He stated that FH had collected the Hearing Notice from the Greyhound bus station and had then served it on GK whom the landlord identified as being

incorrectly listed as GH on the Residential Tenancy Agreement. FH was not called as a witness to confirm this, nor was any evidence submitted to support this assertion. The landlord stated that he “guessed” the Hearing Notice was served on November 12, 2016.

On November 21, 2016, an Amendment to the Application for Dispute Resolution (“The Amendment”) was received by the Branch. The Amendment contained details of a monetary order sought by the landlord for \$1,700.00. The money claimed for was based on rent that the tenant, JH, had not paid, along with a request to keep all or part of the damage deposit. Evidence provided by the landlord included a Monetary Order Worksheet. Page 2 of this worksheet was signed by the landlord but no breakdown of monies owed was completed.

Analysis – Service of Order of Possession

Section 55(2)(d) of the Act provides for a landlord to request an order of possession of a rental unit by making an application for dispute resolution when the landlord and tenant have agreed in writing that the tenancy is ended. In order to serve notice of this type of application, I refer to section 89(2) of the Act, **which reads in part** as follows:

An application by a landlord under section 55 for and order of possession can be served:

- (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;...*

While the landlord testified that the Notice of Hearing and the Order of Possession was served by FH to GK, I am not satisfied that GK is a resident of the unit as per the requirements of section 89(2)(c). Little evidence was provided as to GC’s status as a tenant. Different spellings of GK’s last name appear throughout the evidence which was submitted to establish the existence of his tenancy. A letter contained in the evidentiary package submitted by the landlord of service to GC by FH states that “all eviction related papers” were served on November 23, 2016. This date is different to the November 12, 2016 date for service that the landlord had identified in his sworn testimony at the hearing. It is based on this conflicting testimony that I find that the landlord did not properly serve the tenant with the Hearing Notice.

Analysis - Service of Monetary Order

Section 89(1) of the Act provides direction of the manner in which service of a monetary order must proceed. It 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;*

The landlord provided undisputed testimony that on November 23, 2016, his agent, FH, served the Amendment on GC. As mentioned previously, a letter was provided in the evidentiary package from FH and dated November 23, 2016 stating that he “personally delivered all the eviction related papers into the hands of GK.” Since the Amendment submitted consists of a monetary claim, it must therefore be served in the manner prescribed by section 89(1). I find that the landlord did not properly serve Application for a monetary award.

Conclusion

This matter is dismissed with leave to re-apply.

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: December 16, 2016

Residential Tenancy Branch