



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, OPR

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (the "application") under the *Residential Tenancy Act* (the "Act") for an Order of Possession for unpaid rent and a monetary Order. The landlord's application was commenced by way of direct request proceeding which is an ex parte proceeding. An interim decision was rendered on November 4, 2016 adjourning the matter to a participatory hearing to clarify some of the details of the landlord's application.

The landlord attended at the adjourned participatory teleconference hearing. The tenants did not appear. As the tenants did not attend the hearing, service of the Notice of Direct Request Proceeding (the "Notice of Direct Request") and the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") were considered. The landlord affirmed that on October 27, 2016 she separately served the Tenant S.W. and the Tenant J.N. with a Notice of Direct Request by personally handing the two copies to Person P.W. at the rental unit.

The landlord testified that Person P.W. is the son of Tenant S.W.. The landlord also testified that Person P.W. looks older than nineteen years of age and may be in his late twenties. The landlord further testified that Person P.W. does not reside with the tenants.

The landlord affirmed that on November 22, 2016 she personally handed the Notice of Hearing and the interim decision dated November 4, 2016 to the Tenant J.W. at the rental unit.

Preliminary and Procedural Matters

During the hearing, the landlord withdrew her application for a monetary order. The landlord is seeking only an Order of Possession for unpaid rent.

Issues to be decided

- Is the landlord entitled to an Order of Possession for unpaid rent pursuant to s.55 of the *Act*?

Analysis

The reasons given in the interim decision made on November 4, 2016 for adjourning this matter to a participatory hearing require me to clarify the details as to service of the Notice of Direct Request on the tenants. The Arbitrator was not able to confirm that service of the Notice of the Direct Request was in accordance with section 89 of the *Act*. The Arbitrator stated that there was no indication on the Notice of Direct Request that the person who received the documents is an adult who resides with the tenants.

Based on the testimony of the landlord set out above and the right of both parties to a fair hearing, I find as follows.

I am not satisfied that the tenants have been sufficiently served with the Notice of Direct Request in accordance with Section 89 of the *Act*. The landlord testified that Person P.W., who she handed the two copies of the Notice of Direct Request to on October 27, 2016, does not reside with the tenants.

Section 89(2) of the *Act* does not allow for the landlord's application for an Order of Possession to be left with an adult who does not reside with the tenants. Without proper service of the Notice of Direct Request on the tenants, I am not satisfied that the tenants would have been made aware of the details of the landlord's application.

Therefore, **I dismiss** the landlord's application **with leave to reapply** as I am not satisfied that the tenants have been sufficiently served with the Notice of Direct Request. I note this decision does not extend any applicable time limits under the *Act*. If the landlord has any questions about serving the tenants with the documents, she may call the Residential Tenancy Branch to get this information.

Conclusion

The landlord's application is dismissed with leave to reapply due to a service issue. This decision does not extend any applicable time limits under the *Act*.

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 2, 2016

Residential Tenancy Branch