



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNSD, FF

Introduction

This hearing dealt with a landlord's application for an Order of Possession for cause and authorization to make deductions from the tenant's security deposit. The tenant did not appear at the hearing. The landlord testified that he sent the hearing documents to the tenant at the rental unit address via registered mail on January 26, 2017. The landlord orally provided a tracking number as proof of service. A search of the tracking number showed that Canada Post has left notice cards but that the mail has not yet been picked up. Under section 90 of the Act, a person is deemed to have received documents five days after mailing even if the person refuses to accept or pick up their mail. Accordingly, I found the tenant to be deemed served with notification of this proceeding and I continued to hear from the landlord without the tenant present.

The landlord confirmed that the tenant continues to occupy the rental unit and primary issue is eviction of the tenant. I noted that the landlord's monetary claim appeared to be for anticipated costs to remove garbage from the property and repair the rental unit even though the tenant remains in possession of the rental unit. The landlord stated that he has more recently paid for garbage removal. I found the monetary claim unrelated to the primary reason for making this application, pre-mature in part, and unsupported by evidence. Rule 2.3 of the Rules of Procedure affords me authority to dismiss unrelated matters contained in a single application. Therefore, I severed the monetary claim and dismissed it with leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for cause?

Background and Evidence

The landlord submitted that the tenancy started January 1, 2014 and the tenant is required to pay rent of \$500.00 on the first day of every month. I noted that the landlord had provided a copy of a written tenancy agreement indicating the monthly rent is \$1,000.00 and two tenants are named on the agreement but it was signed by only one of the named tenants. The landlord explained that there are two tenants living in the rental unit and each tenant is required to pay rent of \$500.00. The other tenant, who did not sign the tenancy agreement, resided in the rental unit long before the tenant moved in.

The landlord presented a copy of a 1 Month Notice to End Tenancy for Cause issued to the tenant on December 29, 2016 ("1 Month Notice"). The 1 Month Notice has a stated effective date of January 31, 2017 and indicates the reason for ending the tenancy is "breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so."

I noted that the 1 Month Notice only identified the one tenant named on this Application for Dispute Resolution and not the other tenant named on the tenancy agreement. The landlord explained that he seeks to evict the named tenant only and permit the other tenant to continue his tenancy. I cautioned the landlord that it is unclear as to whether there is a co-tenancy or a tenancy-in-common in place for this rental unit and that it is important to distinguish a co-tenancy from a tenancy in common as ending a co-tenancy ends the tenancy for both co-tenants.

As to service of the 1 Month Notice the landlord testified as follows: On December 29, 2016 the landlord put the 1 Month Notice in the door jamb of the rental unit, with a witness present. The landlord took a photograph of the 1 Month Notice in the door jamb and had the witness sign a Proof of Service. However, a moment later a guest of the tenant opened the door of the rental unit. The tenant was not home at the time so the landlord put the 1 Month Notice on the table in the rental unit and asked the guest to pass it along to the tenant. The landlord confirmed that the guest is not an occupant who apparently resides with the tenant.

The tenant did not file an Application for Dispute Resolution to dispute the 1 Month Notice. The landlord testified that the tenant did not otherwise respond to landlord with respect to the 1 Month Notice; rent was received for the month of February 2017 (which the landlord issued a receipt for use and occupancy only); and, the tenant continues to reside in the rental unit.

Analysis

Under section 55(2)(b) of the Act a landlord may obtain an Order of Possession where a Notice to End Tenancy has been given by the landlord and the tenant has not filed to dispute the Notice within the time limit for doing so. A tenant who receives a 1 Month Notice to End Tenancy for Cause has 10 days after receiving the Notice to dispute it.

Where a Notice to End Tenancy is given, it must be done in a manner that complies with section 88 of the Act. Below, I have reproduced section 88 of the Act:

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.

[Reproduced as written with my emphasis underlined]

In this case, the landlord had put the 1 Month Notice in the door jamb for a brief period of time. Wedging the document in the door jamb is not “attaching” the document to the door as required under section 88(g). Further, removing the document moments after putting it in the door jamb does not afford the tenant a reasonable amount of time to receive the Notice. Therefore, I do not consider the landlord’s efforts to leave the 1 Month Notice in the door jamb for a few moments to constitute service.

Leaving the document on the table in the rental unit is not a method of service permitted under section 88 of the Act. Further, the person that answered the door and observed the landlord put the Notice on the table is not a person who resides with the tenant; thus, the requirements of section 88(e) were not met. Therefore, I find the landlord’s decision to leave the 1 Month Notice on the table in the presence of a guest is not sufficient service either.

Considering the landlord failed to serve the 1 Month Notice in a manner that complies with the Act, and the tenant did not otherwise respond to the 1 Month Notice and rent was paid for a month after the tenancy was set to end, I find I am unsatisfied that the tenant received the 1 Month Notice. To grant an Order of Possession based upon a Notice to End Tenancy not properly served and lack of evidence to suggest it was received would be contrary to the principles of natural justice. Accordingly, I decline the landlord’s request for an Order of Possession based on the 1 Month Notice before me.

Although I have dismissed the landlord’s request for an Order of Possession in this case, the landlord remains at liberty to issue another Notice to End Tenancy to the

tenant, as appropriate, and serve it upon the tenant in one of the ways permitted under section 88.

Conclusion

The landlord's request for an Order of Possession has been dismissed as the landlord did not properly serve the tenant with the 1 Month Notice to End Tenancy for Cause dated December 29, 2016. The landlord remains at liberty to issue another Notice to End Tenancy to the tenant, as appropriate, and serve it upon the tenant in a manner that complies with section 88 of the Act.

The landlord's monetary claims against the tenant has been 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: February 17, 2017

Residential Tenancy Branch