



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR

Introduction

This hearing, adjourned from a Direct Request process in which a decision is made based solely on the written evidence submitted by the landlord, dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67.

The tenant did not attend this hearing, which lasted approximately 15 minutes. The landlord's agent, KG, appeared on behalf of the ('the landlord'), and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply

The landlord testified that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"), dated January 17, 2017, with an effective date of January 27, 2017, by leaving the 10 Day Notice with a person at the rental suite, RE. A Proof of Service was signed by a witness and an agent for the landlord confirming the service of the 10 Day Notice on January 17, 2017.

The landlord testified that the hearing package and evidence was served to the tenant by registered mail on February 28, 2017. In accordance with sections 88, 89 and 90 of the Act, I find the tenant deemed served with copies of the hearing package and evidence on March 5, 2017, five days after mailing.

Issues(s) to be Decided

Has the landlord served documents to the tenant in accordance with the Act?

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent?

Preliminary Issue - Service of the 10 Day Notice

The landlord testified during the hearing that the 10 Day Notice was served to the tenant on January 17, 2017, by leaving the notice with someone residing at the suite. A proof of service was submitted in the landlord's evidence indicating that a person, RE, was personally served on January 17, 2017. The person receiving the notice signed the Proof of Service, and there is a checkmark in the box confirming that RE lives with the tenant. The box that states "I am an adult" is unchecked, and the landlord indicated in the hearing that he was unable to confirm whether RE is an adult or not.

Section 88 of the Act establishes the following rules for service of documents.

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.

At the hearing, the landlord advised me that he was unable to confirm whether the 10 Day Notice was served to an adult. Accordingly I find that the landlord has not served the tenant in a manner required by section 88 of the *Act*. For this reason, I cannot consider the landlord's application for an Order of Possession, or Monetary Order for Unpaid Rent. I am not satisfied that the tenant was properly served with the 10 Day Notice. The 10 Day Notice dated January 17, 2017 is cancelled, and is of no force or effect.

Conclusion

I dismiss the landlord's entire application, and the 10 Day Notice dated January 17, 2017 is cancelled.

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: March 27, 2017

Residential Tenancy Branch