



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MDSD & FF

Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession for non-payment of rent
- b. A monetary order in the sum of \$2300 for unpaid rent
- c. An order to retain the security deposit
- d. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of the applicant and in the absence of the respondent. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

The landlord produced a document called NOTICE TO PAY OR QUIT dated April 20, 2017. It is not on the approved form. He also produced a document called PROOF OF SERVICE where it the deponent states he/she personally attached a copy of this notice to Quit to the door of the rental property. The landlord testified that a 10 day Notice to End was served on the Tenant by his lawyer. However he is in a dispute with his lawyer and his lawyer refuses to give the document to him. The landlord failed to provide a copy of this document.

The landlord further testified that a friend of his served a copy of the Application for Dispute Resolution on the Tenant by posting it to the door. The friend did not attend the hearing to give evidence. The friend did not provide an affidavit of service of the Application for Dispute Resolution because the residents would not answer. He further testified he is not permitted to go to the residence as he was involved in a dispute with the residents. The police were called.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?

- b. Whether the landlord is entitled to A Monetary Order and if so how much?
- c. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- d. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The landlord testified that he entered into an oral contract with the tenant to rent the rental unit commencing April 3, 2017. The rent was \$1600 per month. The damage deposit was to be \$800.

The tenant has failed to pay the rent for April, May and June. Further, the tenant has only paid \$100 of the security deposit.

Analysis - Order of Possession:

Section 46(2) of the Residential Tenancy Act provides that where a landlord wishes to end a tenancy for unpaid rent the landlord must comply with section 52 of the Act.

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

Section 52(e) of the Act provides that where the Notice to End Tenancy is given by the landlord it must be in the approved form.

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,

(d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and

(e) when given by a landlord, be in the approved form. (my emphasis)

The NOTICE TO PAY OR QUIT is not in the approved form. The landlord testified his lawyer served a 10 day Notice to End Tenancy. However, the lawyer did not testify or provide an affidavit of service. The landlord failed to produce a copy of the Notice that was allegedly served. I determined the landlord failed to prove a 10 day Notice to End Tenancy in the approved form was served. As a result I dismissed the landlord's application for an Order of Possession.

Analysis - Monetary Order and Cost of Filing fee:

The landlord testified that his friend served a copy of the Application for Dispute Resolution on the Tenant by posting it to the door. The friend did not testify at the hearing. The friend did not provide evidence in the form of a PROOF OF SERVICE stating that he/she served the Application.

Policy Guideline 12 includes the following:

15. PROOF OF SERVICE

Where the respondent does not appear at a dispute resolution hearing, the applicant must be prepared to prove service of the notice of hearing package. Proof of service of other documents may be submitted in support of claims for dispute resolution in accordance with the Rules of Procedure.

Where proof of service is required, the person who actually served the documents must either:

- be available as a witness in the hearing to prove service, or
- provide a signed statement with the details of how the documents were served.

...

Failure to prove service may result in the matter being dismissed, with or without leave to reapply. Adjournments to prove service are given only in unusual circumstances.

I dismissed the landlord's application for an Order of Possession and a monetary order with leave to re-apply as the landlord failed to provide evidence that the Application for Dispute Resolution was served on the Tenant.

Further, even if the landlord's hearsay testimony was accepted that his friend posted it to the door, this is insufficient service for the purpose of obtaining a monetary order. Section 89(1) provides as follow:

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;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

Conclusion:

I dismissed the landlord's application for an Order of Possession with leave to re-apply as the landlord failed to provide sufficient evidence to prove that the Application for Dispute Resolution was served on the Tenant. Further, he failed to prove that he used a 10 day Notice to End Tenancy in the approved form as required by the Residential Tenancy Act. Further, I dismissed the landlord's application for a monetary order with leave to re-apply as the landlord failed to prove sufficient service of the Application for Dispute Resolution.

The landlord is very upset with the situation. He feels that the tenant is taking advantage of him. He expressed extreme displeasure that I was not able to give him the orders that he is seeking. I advised him that I would get my decision out as quickly

as possible and I encouraged him to immediately talk to an information officer from the Residential Tenancy Branch.

The difficulties experienced by the landlord in proving service could have been easily resolved had the landlord served the 10 day Notice to End Tenancy and the Application for Dispute Resolution by registered mail.

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: June 21, 2017

Residential Tenancy Branch