



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's application for a Monetary Order for damage to the rental unit or property; unpaid rent or utilities; damages or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit and/or pet damage deposit. The landlord appeared at the hearing; however, there was no appearance on part of the tenants.

Preliminary and Procedural Matters

1. Service of hearing documents

Where a respondent does not appear at the hearing, the applicant bears the burden to prove the respondent was served with the hearing documents in a manner that complies with the Act. Since this is a monetary claim, section 89(1) applies and registered mail is a permissible method of service; however, section 89(1) provides that when serving a tenant by registered mail the address for service must be the tenant's forwarding address that was provided by the tenant or the tenant's address of residence.

The landlord had named two tenants in filing this application and I proceeded to explore service of the hearing documents upon each tenant. The landlord testified that he sent a registered mail package containing the hearing package and evidence to each tenant on April 2, 2017 and that both packages were returned as unclaimed. As for the service address used, the landlord testified that the tenants did not provide a forwarding address so the landlord performed a corporate registry search of the male tenant's business which produced an address for Director of the company. The Director of the company is listed as being the male tenant. The landlord attended the address identified by the corporate registry search and observed that it was a house and that the

male tenant's company and personal vehicles were parked at the property. As evidence, the landlord provided a print-out of the corporate registry search; photographs of the vehicles parked at the address in January 2017, including a grey Honda; and an advertisement demonstrating that a grey Honda belonged to the male tenant. I was satisfied that the male tenant likely resided at the service address and I was satisfied that the landlord served the male tenant in a manner that complies with section 89(1) of the Act. Even though the male tenant did not pick up the registered mail, he is deemed to be served five days after mailing pursuant to section 90 of the Act.

As for whether the female tenant was residing at the service address used by the landlord, I find the landlord's evidence was much weaker. The landlord testified that the male and female tenant were a couple during the tenancy, although the tenancy ended in 2015. Also, the landlord received a phone bill at the rental unit address in September 2016 that was addressed to the female tenant. The landlord opened the phone bill and observed there were two telephone numbers in the female tenant's name but the landlord submitted that one number is likely used by the male tenant. I find the evidence did not satisfy me that the female tenant was residing at the service address in April 2017. Therefore, I was not satisfied that she was sufficiently served with notice of the claims against her and I excluded the female tenant as a named party to this dispute.

2. Time limit to make claim

Section 60(1) provides that the time limit to make a claim under the Act is within two years within the date the tenancy ended. Section 44 of the Act provides for the ways a tenancy ends. Section 44 provides as follows:

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 *[tenant's notice]*;

(i.1) section 45.1 *[tenant's notice: family violence or long-term care]*;

(ii) section 46 *[landlord's notice: non-payment of rent]*;

(iii) section 47 *[landlord's notice: cause]*;

(iv) section 48 [*landlord's notice: end of employment*];

(v) section 49 [*landlord's notice: landlord's use of property*];

(vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];

(vii) section 50 [*tenant may end tenancy early*];

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended.

[Reproduced as written with my emphasis underlined]

The tenancy was set to end on May 31, 2016 under a fixed term tenancy agreement; however, the tenancy ended earlier than that. The landlord sent a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") to the tenants on March 3, 2015 via registered mail. The 10 Day Notice has a stated effective date of March 19, 2015. The registered mail was not picked up by the tenants. Even though the 10 Day Notice was not picked up by the tenants it is deemed to be received by the tenants five days after mailing pursuant to section 90 of the Act. Accordingly, I find the tenancy was set to end on the stated effective date of March 19, 2015. The landlord submitted that he also telephoned the female tenant and left a message informing her that they were evicted and they had to leave the property by "19/3" which I interpret to mean March 19, 2015 as stated on the 10 Day Notice. Therefore, I find the tenancy ended on March 19, 2015 for unpaid rent pursuant to section 44(1)(a)(ii) of the Act.

On March 23, 2015 the landlord issued a notice of entry to the tenants for purposes of showing the rental unit to prospective tenants. The landlord took a photograph of the notice of entry posted to the door of the rental unit. The landlord provided photographs of the notice of entry posted to the door and other parts of the property. The

photographs are labelled as “March 24, 2015 giving notice”. In the photographs some portions of the interior of the rental unit are visible. There appears to be no furnishings or possessions in the rental unit. Accordingly, I find it likely the tenants vacated or abandoned the rental unit on or before March 24, 2015.

In light of the above, I find the clear evidence as to the date the tenancy ended is March 19, 2015.

The landlord filed this Application for Dispute Resolution on March 28, 2017 and this is more than two years after the tenancy ended. Accordingly, I find landlord did not file his Application for Dispute Resolution within the time limit for doing so as provided under section 60(1) of the Act. As provided under section 60(2) of the Act, “if an application for dispute resolution is not made within the 2 year period, a claim arising under this Act or the tenancy agreement in relation to the tenancy ceases to exist for all purposes...” [my emphasis underlined]. Therefore, I find the landlord’s claims against the tenants ceased to exist prior to filing of his Application and I dismiss his Application.

Conclusion

The landlord filed this Application more than two years after the tenancy ended and the claimed ceased to exist pursuant to section 60(2) of the Act. Accordingly, the landlord’s application has been dismissed.

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: September 22, 2017

Residential Tenancy Branch