



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding THE KETTLE FRIENDSHIP SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MNR, MNSD, FF

Introduction

The landlord applies for an order of possession pursuant to a ten day Notice to End Tenancy in the government form, dated September 9, 2015 and for a monetary award for unpaid rent and the filing fee.

The tenant did not attend the hearing within ten minutes after its scheduled start time.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show that the tenant has been served with the landlord's application? Does it show that the landlord is entitled to an order of possession or a monetary award as claimed?

Background and Evidence

The rental unit is a studio apartment. According to the landlord's representative the tenancy started sometime prior to June 2015. The monthly rent is \$475.00, due on the first of each month, in advance. The landlord holds a \$237.50 security deposit.

Mr. S.-E. for the landlords testifies that he attached the ten day Notice to the tenant's door on September 9, 2015. He says the tenant did not pay the \$475.00 demanded in the Notice or apply to cancel within five days following receipt, or at all.

He says he served the landlord's application for dispute resolution and the notice of this hearing on the tenant by attaching it to the tenant's door on November 9, 2015.

Analysis

When a respondent fails to attend a hearing it is incumbent on the applicant, the landlord in this case to prove service of the relevant documents.

Section 88 of the *Residential Tenancy Act* (the “RTA”) provides that documents like Notices may be served on a tenant by attaching it to the tenants door. I find that the landlord has effectively served the tenant with the ten day Notice.

Section 89 of the *RTA* makes provision for service of applications for dispute resolution. It provides:

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*].

(2) An application by a landlord under section 55 [*order of possession for the landlord*], 56 [*application for order ending tenancy early*] or 56.1 [*order of possession: tenancy frustrated*] must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by registered mail to the address at which the tenant resides;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;**
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

(3) A notice under section 94.21 [*notice of administrative penalty*] must be given in a manner referred to in subsection (1).

(emphasis added)

As can be seen, subsection (1) does not provide for service of an application by serving an adult who apparently resides with the tenant, but an application for an order of possession does permit such a method of service.

It follows that the landlord's application for an order of possession has been properly served on the tenant by attaching it to the tenant's door, but that its application for a monetary award has not.

As a result, I grant the landlord's request for an order of possession. Section 46 of the *RTA* operates in these circumstances to end the tenancy as of September 22, 2015.

I dismiss the landlord's claim for a monetary award due to lack of proof of proper service of the application on the tenant. I grant the landlord leave to re-apply.

I grant the landlord recover of the \$50.00 filing fee for this application and I authorize the landlord to recover that fee from the security deposit it holds, in full satisfaction.

Conclusion

The landlord's claim for an order of possession is allowed. The landlord's claim for a monetary award is dismissed with leave to re-apply.

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: January 06, 2016

Residential Tenancy Branch

