



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, OPR

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 20 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant has, according to the testimony of the landlord, vacated the residence as of November 2, 2016. Therefore, an Order of Possession is unnecessary.

Background and Evidence - Service of Landlord's Application

The landlord testified that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 15, 2016 (the "10 Day Notice"), on that same date, by leaving a copy with the tenant. A Proof of Service was signed by a witness and the landlord confirming the service of the 10 Day Notice. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 10 Day Notice on September 15, 2016.

The landlord testified that he served the Notice of Reconvened Hearing and Notice of Direct Request documentation by hand delivering the notices to the son of the tenant on October 27, 2016. The landlord's son testified in this hearing as a witness confirming the service of the documents to the tenant's son.

Analysis – Service of Landlord's Application

Section 89 of the Act sets out how an Application for Dispute Resolution may be served: **Special rules for certain documents**

- 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*].

The tenant did not appear at this hearing. The evidence of the landlord and his witness is that he served the tenant with the original Notice of Direct Request and the Notice of Reconvened hearing by delivering the notices to the adult son. With respect to his application for a monetary award, this is not an acceptable form of service required by section 89(1) of the *Act*. I am therefore unable to consider the landlord's application seeking a monetary Order for rental arrears because I am not satisfied that the tenant has had proper notice of that claim. This application is therefore dismissed with leave to reapply.

Conclusion

I dismiss the landlord's application for monetary award 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: December 2, 2016

Residential Tenancy Branch