



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

OPR, MNR, FF

Introduction

This was a reconvened hearing which dealt with an Application for Dispute Resolution by the landlord seeking an Order for Possession and a Monetary Order for unpaid rent, and recovery of the filing fee.

The landlord originally applied through the direct request process which, upon review, was scheduled for a conference call hearing in accordance with section 74 of the *Residential Tenancy Act*.

A representative for the applicant appeared, gave affirmed testimony, was provided the opportunity to present their evidence orally, in written form, documentary form, and make submissions to me.

The tenant did not make an appearance at the hearing.

Issue(s) to be Decided

The landlord is seeking an Order of Possession and a Monetary Order claiming unpaid rent of \$1,560.00 for accrued pad rental arrears since October 1, 2008, two NSF charges of \$50.00, and to recover the filing fee of \$50.00.

The issues to be determined based on the testimony and the evidence are:

Whether or not the landlord is entitled to an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent

Whether or not the landlord is entitled to monetary compensation for rental arrears owed and recovery of the filing fee

Background and Evidence

The landlord provided documentary evidence and advised that the tenancy began January 30, 2008, is a month to month tenancy, and pad rental is \$312.00 due on the first of each month.

The landlord testified that a 10 Day Notice to End Tenancy was issued on January 27, 2009 and pursuant to section 81(f) of the *Manufactured Home Park Tenancy Act*, was placed in the tenant's mail box by the site manager on January 27, 2009 at approximately 6:30 p.m. The site manager did not appear at this hearing to testify to the service of this notice.

Documentary evidence provides a certificate of service, signed by the site manager, stating he personally served the Direct Request Hearing Documents to the tenant on February 20, 2009 at 7:45 p.m. In direct contradiction to this evidence, there is documentary evidence on file whereby the landlord signed a statement of "Proof of Service of the Notice of Direct Request Proceeding" stating she served the tenant the Direct Request Hearing Documents to the tenant on February 20, 2009. At the hearing the landlord testified that service of the Direct Request Hearing Documents was done in person by the site manager and not herself.

The landlord testified that the notice of the Reconvened Hearing was served to the tenant, in person by the site manager, on March 25, 2009 at 11:30 a.m., fourteen days after the decision to reconvene and new hearing documents were sent to the

landlord. The site manager did not attend the hearing to testify to the service of notice of these hearing documents.

The landlord advised that the tenant made a payment of \$ 1,500.00 on February 24, 2009 leaving a balance due of \$60.00 for February 2009, \$312.00 for March 2009, and \$50.00 of NSF charges for a total arrears of \$422.00.

The landlord is requesting an Order of Possession effective 2 days after service and a monetary order to recover the \$422.00 arrears plus the \$50.00 filing fee.

Analysis

As noted in the March 11, 2009 decision, the purpose of service documents under the *Manufactured Home Park Tenancy Act* is to notify the person being served of their breach and notification of their rights under the *Act* in response. The landlord is seeking to end the tenancy due to this breach; and so the landlord has the burden of proving that the tenant was served with all required documents in accordance with the *Manufactured Home Park Tenancy Act*.

Residential Tenancy Branch Rules of Procedure 3.3 stipulate that if a respondent does not attend the dispute resolution proceeding, the application must prove to the Dispute Resolution Officer that each respondent was served as required under the *Act*. If served in person, the person who served the documents must either attend the dispute resolution proceeding as a witness, either in-person or by conference call.

As per the landlord's testimony it was the site manager who served the tenant the 10 Day Notice to End Tenancy and in his absence at the hearing, I find the applicant has failed to prove service of the 10 Day Notice has been effected in accordance with the *Act*.

The landlord testified that the site manager served the notice of the reconvened hearing, to the tenant in person on March 25, 2009 at 11:30 a.m. which is 14 days after the decision was made.

The March 11, 2009 decision stipulates “Notices of Reconvened Hearing are enclosed with this decision for the application to serve upon the tenant, including all other required documents, within **three (3) days** of receiving this decision in accordance with section 88 of the *Act*.”

I find that service of the Notice of Reconvened Hearing was not effected in accordance with Section 52 of the *Manufactured Home Park Tenancy Act* as service was not initiated within the three (3) day time limit and the site manager did not attend to testify that service was done, as stated by the landlord.

To find in favour of an application for a monetary claim, I must be satisfied that the rights of all parties have been upheld by ensuring the parties have been given proper notice to be able to defend their rights. As I have found the service of documents not to have been effected in accordance with the *Act*, I dismiss the landlord’s monetary claim.

Conclusion

I hereby dismiss the landlord’s application for an Order of Possession, without leave to reapply.

I hereby dismiss the landlord’s application for a Monetary Order, with leave to reapply.

March 30, 2009

Date of Decision

Dispute Resolution Officer