

## **DECISION**

Dispute Codes      OPR MNR FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession and a Monetary Order for unpaid rent and to recover the cost of the filing fee.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on April 2, 2009. Mail receipt numbers were provided in the landlord's verbal testimony. The tenant was deemed to be served the hearing documents on April 7, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave affirmed testimony and was provided the opportunity to present his evidence orally, in writing, and in documentary form.

All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

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

- Whether the landlord is entitled to an Order of Possession under Section 55 of the *Act* for unpaid rent
- Whether the landlord is entitled to a Monetary Order under section 67 of the *Act* for unpaid rent.

### Background and Evidence

The landlord attended the hearing and testified that he tried to serve the tenant the 10 Day Notice to End Tenancy on March 2, 2009 but that the tenant would not accept it.

The landlord testified that he pasted a second 10 Day Notice to End Tenancy on the tenant's door but the landlord advised that he was not able to provide verbal testimony as to the date and time he posted this notice on the door.

The landlord testified that he was not able to testify to the date when the security deposit was paid by the tenant and that he could not speak to the specifics of the tenancy agreement as he did not have the tenant's file with him.

The landlord's witness was contacted and added to the hearing. The witness testified that he was present when the landlord taped the 10 Day Notice to End Tenancy on the tenant's door, however he did not know what the date or time was when this occurred.

#### Analysis

On the landlord's Application for Dispute Resolution he lists that the Notice to End Tenancy was served to the tenant March 02/03. The landlord could not provide any proof as to the personal service and stated that there were no witnesses.

Neither the landlord nor his witness could testify to the date and time the Notice to End Tenancy was posted on the tenant's door.

The purpose of serving documents under the *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; however, the landlord has the burden of proving when the tenant was served with the 10 day Notice to End Tenancy.

#### Analysis

In the absence of the evidence of proof of service of the Notice to End Tenancy I find that the landlord has failed to establish that the tenant was served with the 10 day Notice to End Tenancy in accordance with the *Residential Tenancy Act* and dismiss the landlord's application.

Conclusion

I HEREBY DISMISS the landlord's application without 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: April 24, 2009.

---

Dispute Resolution Officer