

## **DECISION**

Dispute Codes      OPC MNSD MNR MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain an Order of Possession for cause and to obtain a Monetary Order for unpaid rent, for money owed or compensation for damage or loss under the *Act*, to keep all of the security and or pet deposit, and to recover the cost of the filing fee from the tenants.

Service of the hearing documents, by the landlord to each tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on May 4, 2009. Mail receipt numbers were provided in the landlord's documentary evidence. The tenants were deemed to be served the hearing documents on May 9, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

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

The tenants did not appear despite being served with notice of today's hearing in accordance with the *Residential Tenancy Act*.

All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

Is the landlord entitled to an Order of Possession under Section 55 of the *Act* and a Monetary Order pursuant to sections 38, 67, and 72 of the *Act*?

### Background and Evidence

The representative for the landlord testified that a 1 Month Notice to End Tenancy was issued and served to the tenants. The landlord's representative was not able to testify as to who conducted the service or how and when the service of the 1 Month Notice to End Tenancy was effected.

The landlord's representative testified that a 10 Day Notice to End Tenancy for Unpaid Rent was served to the tenants after the 1 Month Notice to End Tenancy was served and that the landlord had applied to amend their application for dispute resolution.

### Analysis

Section 3.3 of the *Residential Tenancy Branch Rules of Procedure* stipulate that if the respondents do not attend the dispute resolution proceeding, the applicant must prove to the Dispute Resolution Officer that each respondent was served as required under the *Act* and that the person who served the documents must either attend the dispute resolution proceeding as a witness, or submit as evidence an affidavit of service, sworn by the person who served the documents, informing the Dispute Resolution Officer how the service was accomplished.

Based on the testimony I find that there is no proof that an amended application was served to the tenants or the *Residential Tenancy Branch*. I find that the landlord has failed to prove that service of the 1 Month Notice to End Tenancy was done in accordance with the *Act*.

To find in favour of an application, 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. In the absence of proof that the service of documents has been effected in accordance with the *Act*, I dismiss the landlord's application with leave to reapply.

### Conclusion

I HEREBY DISMISS the landlord's application 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: June 08, 2009.

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Dispute Resolution Officer