

DECISION

Dispute Codes MNR MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain a Monetary Order for unpaid rent, unpaid utilities and to retain the security deposit.

Service of the hearing documents, by the landlord to the tenant, was done via Registered Mail to the tenant's last known address. Canada Post Receipt numbers were provided in the landlord's evidence.

The landlord and her agent (her spouse) appeared, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Is the landlord entitled to a Monetary Order pursuant to Section 67 of the *Residential Tenancy Act*?

Background and Evidence

The landlord's agent testified that the month to month tenancy at the rental unit in question began on November 1, 2005 and ended on March 31, 2007. Rent of \$525.00 was payable on the first of each month. The landlord's agent stated that the tenants first rented a house from them at a different location and paid a security deposit of \$325.00 back in September 2005 and that the landlord and tenant agreed to transfer the tenancy agreement and security deposit to the location in question.

The landlord's agent testified that he has not seen the tenant for the last 2 years but that he knows the tenant's family well. The landlord's agent stated that the tenant's ex and the tenant's daughter both know that the landlord is looking for the tenant however they

always tell the landlord and her agent that they do not know where the tenant is. The landlord's agent testified that he has lived in the same community where the rental unit is located for over 32 years, that it is a small community and everyone knows that the landlord and her agent are looking for the tenant but that no one seems to know where the tenant is.

The landlord's agent first testified that the notice of dispute resolution was sent to the tenant's family's address but then changed his statement to say that he knew this address to be the tenant's address. The landlord's agent testified that he was told that he didn't need to know where the tenant was and that he could send the tenant's copies of the dispute resolution proceeding to the tenant's last known address, which is what the landlord's agent did.

The landlord's agent testified that the tenancy ended March 31, 2007. The landlord's agent stated that he did not have written documentation to prove that this was the date the tenancy ended, he did not have a move-out inspection report, no notice to end tenancy in writing, and that the tenant gave the keys to the rental unit to the tenant's brother after the tenant vacated the unit.

The landlord is requesting a monetary order of \$2,310.98 for unpaid rent and utilities.

Analysis

Section 3.3 of the *Residential Tenancy Branch Rules of Procedure* stipulate that if the respondent tenant does not attend the dispute resolution proceeding, the applicant landlord must prove to the Dispute Resolution Officer that the respondent tenant was served as required under the *Act*. Section 89(1)(C) of the *Act* states that an application for dispute resolution, when required to be given to one party by another, if given by registered mail must be sent to **the address at which the person resides**.

Based on the testimony and evidence before me I find that service of the dispute resolution hearing documents was not 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. The landlords have waited until the last possible date outlined within the *Act* to make application for dispute resolution, (Applied March 31, 2009 and landlord's agent testified that the tenancy ended March 31, 2007) and as a result of the service documents not being served in accordance with the *Act*, I find that the landlords have not left themselves enough time to reapply and that they are now subject to Section 60(2) of the *Act*.

In the absence of proof that the service of dispute resolution hearing documents have been effected in accordance with the *Act* and the 2 year time limitation to apply has now been exceeded, I dismiss the landlord's application without leave to reapply.

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: June 09, 2009.

Dispute Resolution Officer