

DECISION

Dispute Codes OPR MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession, a Monetary Order for unpaid rent, to keep the security deposit, for money owed or compensation for damage or loss under the Act, and to recover the cost of the filing fee from the Tenants for this application.

Service of the hearing documents, by the Landlord was done via registered mail on July 24, 2009. The Landlord testified that one envelope was mailed and returned to the Landlord and marked unclaimed. The Landlord did not know whose name the registered package was address to.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present her 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 an Order of Possession and a Monetary Order under sections 38, 55, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The fixed term tenancy began on May 1, 2009 and was set to expire on April 30, 2010. Rent was payable on the first of each month in the amount of \$1,350.00 and the Tenant paid a security deposit of \$675.00 on April 24, 2009.

The Landlord testified that when the Tenants failed to pay July 2009 rent a 10 Day Notice to End Tenancy was placed in the Tenants mailbox on July 2, 2009.

The Landlord argued that when the Tenants failed to comply with the notice a notice to enter was posted on the rental unit door and the Landlord entered on August 18, 2009 and found that the rental unit had been vacated.

The Landlord has withdrawn her request for an Order of Possession and is seeking a Monetary Order for July 2009 unpaid rent of \$1,350.00, late payment fee of \$25.00 as provided for in section 10 of the tenancy agreement, \$99.75 for a hydro bill, and to recover the \$50.00 filing fee from the Tenants.

Analysis

The Landlord has applied for a monetary claim and filed an application against two male Tenants. I note that the tenancy agreement was issued and signed by only one person, the second male named on the Landlord's application, and there is no mention of the first male listed on the Landlord's application. The Landlord could not provide evidence or testimony to confirm whose name was listed on the registered mail Notice of Dispute Resolution envelope which was returned to the Landlord unclaimed and I note that the 10 Day Notice to End Tenancy for Unpaid Rent was issued to only the first male named on the Landlord's Application, the person who does not have a signed tenancy agreement with the Landlord.

I find that there is no evidence to support that the service of the Notice of Dispute Resolution was effected in accordance with Section 89 of the *Residential Tenancy Act*, sent to the Tenant who is named in the tenancy agreement. I also find that the Tenant named in the tenancy agreement was not issued a demand notice for unpaid rent and utilities.

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 claim.

The Landlord is advised to administer the Tenant's security deposit in accordance with Section 38 of the *Residential Tenancy Act*.

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: September 11, 2009.

Dispute Resolution Officer