

## **DECISION**

Dispute Codes      OPR MNR MNSD FF  
                         CNR OLC LRE FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the Landlord and the Tenants.

The Landlord applied to obtain an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, to retain the security, deposit, and to recover the cost of the filing fee from the Tenants for this application.

The Tenants applied to obtain an Order to cancel a notice to end tenancy for unpaid rent, to order the Landlord to comply with the Act and suspend or set conditions on the Landlord's right to enter the rental unit, to authorize the Tenants to change the locks, and to recover the cost of the filing fee from the Landlord for this application.

### Preliminary Issues

The Landlord testified that the Tenants vacated the rental unit on August 19, 2009 and as a result he is withdrawing his application for an Order of Possession. The Landlord has requested to proceed with his request for a Monetary Order.

The Landlord testified that he served the Tenants with notice of Dispute Resolution by slipping the notice under the Tenants' door on approximately August 5, 2009 and that he had proof that the Tenants had received the notices because he had a tape recorded telephone conversation whereby the Tenants acknowledged receipt.

There was no one in attendance at the hearing for the Tenants.

## Analysis

### **Landlord's Application**

The Landlord provided evidence that the hearing packages consisting of the Notice of Dispute resolution were slipped under the Tenants' door. Based on the aforementioned, I find that service of the Notice of Dispute Resolution was not effected in accordance with Section 89 of the *Residential Tenancy Act* which states that service of Notice of Dispute Resolution, must be served to each Tenant either in person or via registered mail to an address where the tenant resides.

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, with leave to reapply.

I have included in the Landlord's decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the Landlord to familiarize himself with his rights and responsibilities as set forth under the *Residential Tenancy Act*.

### **Tenant's Application**

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing. In the absence of the Applicant Tenants, the telephone line remained open while the phone system was monitored for ten minutes and no one on behalf of the Applicant Tenants called into the hearing during this time. Based on the aforementioned I find that the Tenants have failed to present the merits of their application and the application was dismissed.

Conclusion

**I HEREBY DISMISS** the Landlord's application, with leave to reapply.

**I HEREBY DISMISS** the Tenants' 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 21, 2009.

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Dispute Resolution Officer