



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes: OPR, MNR, MNSD, FF

Introduction

This matter was originally before a Dispute Resolution Officer on November 3, 2009, by way of a Direct Request Proceeding pursuant to Section 55(4) of the *Residential Tenancy Act* (the “Act”). The Dispute Resolution Officer adjourned the matter to a participatory Hearing, in order that the Landlord could provide the Proof of Service of the Notice to End Tenancy. The Landlord was ordered to serve the Tenant with the Notice of Hearing Documents in accordance with the provisions of Section 88 of the Act, within 3 days of receiving her Decision.

This is the Landlord’s application for an Order of Possession; a Monetary Order for unpaid rent; to apply the security deposit towards the Landlord’s monetary claim; and to recover the cost of the filing fee from the Tenant.

I reviewed the evidence provided by the Landlord prior to the Hearing. The Landlord’s agent gave affirmed evidence and this matter proceeded on its merits.

Preliminary Matter

At the onset of the Hearing, the Landlord’s agent testified that the Tenant had vacated the rental unit in early November without leaving a forwarding address, and that therefore the Landlord was not able to serve the Tenant with the Notice of Hearing documents. The Landlord’s agent testified that the rental unit was re-rented in mid-November, 2009.

The Landlord's agent testified that the Proof of Service of the Notice to End Tenancy accompanied the Landlord's Direct Request Application and must have been separated from the file. The Landlord's agent submitted that, since the Proof of Service was provided, the Order of Possession and Monetary Order requested should have been allowed. Despite the Landlord not being able to serve the Tenant with the Notice of Hearing documents, the Landlord's agent requested a Monetary Order for unpaid rent, together with the late fee and the filing fee; and to apply the security deposit in partial satisfaction of the monetary claim.

Analysis

The Tenant has moved out of the rental unit and therefore the Landlord's application for an Order of Possession is dismissed without leave to reapply.

The Landlord did not serve the Tenant with the Notice of Hearing documents for today's Hearing.

While it is possible that the Landlord's Proof of Service of the Notice to End Tenancy was separated from the case file, the Decision has been made with respect to the Direct Request Proceeding. In any event, I can see no prejudice to the Landlord in dismissing the remainder of the Landlord's application with leave to reapply. A Monetary Order must be served upon the Tenant, and the Landlord is unaware of the Tenant's whereabouts. With respect to disposition of the security deposit, if the Tenant provides the Landlord with his current address, the Landlord will have 15 days from receipt of the Tenant's forwarding address to re-apply against the security deposit.

Conclusion

The Landlord's application for an Order of Possession is dismissed without leave to reapply. The remainder of the Landlord's application is dismissed with leave to re-apply.

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.

December 1, 2009

Date of Decision