



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 hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Agent for the Landlord stated that he personally served copies of the Application for Dispute Resolution and Notice of Hearing to one of the Tenants at the rental unit on November 18, 2009, although he cannot now recall whether he served them to the female or the male Tenant. Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that both Tenants were served in accordance with section 89(2)(c) of the *Residential Tenancy Act (Act)*. I find this method of service to be sufficient for the purposes of the application for an Order of Possession, as only one Tenant needs to be served when applying for an Order of Possession.

The Landlord has also applied for a monetary Order which requires that the Landlord to serve each respondent these documents, pursuant to section 89(1) of the *Act*. Section 89(1) of the *Act* outlines a variety of service methods, but does not include leaving copies of the Application for Dispute Resolution and Notice of Hearing with another adult who lives in the rental unit. As the Landlord does not recall which Tenant he personally served with copies of the Application for Dispute Resolution Package and Notice of Hearing, I find that I am not able to conclude that either Tenant has been sufficiently served with these documents for the purposes of the application for the monetary Order. As the Landlord has been unable to prove service in relation to the application for a monetary Order, the Landlord withdrew the application for a monetary Order.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent; to keep all or part of the security deposit; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Agent for the Landlord stated that the Tenants entered into a tenancy agreement with the Landlord which began on August 01, 2009 and that the Tenants were required to pay monthly rent of \$745.00 on the first day of each month.

The Landlord declared that the Tenants have not paid all of the rent that was due for September of 2009 and that no rent has been paid for October, November, or December of 2009.

The Agent for the Landlord stated that a female agent for the Landlord posted a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of October 15, 2009 on the front door of the rental unit on October 05, 2009. The Notice declared that the Tenants had not paid \$1,507.00 in rent that was due on October 01, 2009.

The individual who posted the Notice to End Tenancy was not in attendance at the hearing and attempts to contact her by telephone were unsuccessful. The Landlord was given the opportunity to fax a written declaration regarding service of the Notice to End Tenancy from the person who served the Notice. The Landlord was advised the matter would be determined in the absence of the written declaration if the declaration was not received on, or before, December 11, 2009. I had not received the declaration by the time this decision was rendered.

Analysis

The purpose of serving documents under the *Act* is to notify the person being served of their breach and notification of their rights under the *Act* in response. The Landlord has the burden of proving that the Tenant was served with the Ten Day Notice to End Tenancy. In the absence of the evidence that corroborates the Agent for the Landlord's statement that the Notice to End Tenancy was posted by a third party, I find that the Landlord has failed to establish that the Tenant was served with the 10 day Notice to End Tenancy.

Conclusion

Having found that the Landlord has failed to prove serve of the 10 day Notice to End Tenancy, I hereby dismiss the Landlord's application for an Order of Possession and to recover the filing fee paid by the Landlord for this Application for Dispute Resolution. 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: December 14, 2009.

Dispute Resolution Officer