

DECISION

Dispute Codes OPR MNR MNSD FF
 CNR OLC

Introduction

This hearing dealt with cross Applications for Dispute Resolution whereby the Landlord filed an application on October 29, 2009 to obtain an Order of Possession for unpaid rent, and a Monetary Order for unpaid rent, to keep the security deposit, and to recover the cost of the filing fee from the Tenants for this application; and the Tenants filed an application for dispute resolution on October 27, 2009 to obtain an Order to cancel a notice to end tenancy for unpaid rent and to Order the Landlord to comply with the Act.

Service of the hearing documents, by the Landlord, was not done in accordance with section 89 of the *Residential Tenancy Act (Act)* and #3.1 of the Residential Tenancy Branch Rules of Procedure, which provide that “each” tenant must be served via registered mail if the Landlord is seeking a Monetary Order. Service of one hearing package via registered mail with both Tenants’ names listed on the envelope satisfies service when the Landlord is seeking only an Order of Possession under section 89(2) of the Act and so the hearing proceeded.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. Neither Tenant appeared despite service of the hearing documents nor despite the fact the Tenants are applicants in the cross application.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Is the Landlord entitled to Orders under sections 38, 55, 67, and 72 of the *Residential Tenancy Act*?

Are the Tenants entitled to Orders under sections 46 and 62 of the *Residential Tenancy Act*?

Background and Evidence

Landlord’s Application

The Landlord testified that the tenancy began on June 1, 2009 and the monthly rent is payable on the first of each month in the amount of \$800.00.

The Landlord testified that a 10 Day Notice to End Tenancy was served to the Tenants on October 15, 2009 for rent that was due on October 1, 2009. I asked why the copy of the notice the Landlord submitted into evidence was for rent that was due on 01-10-2009 and the Tenant's copy submitted into their evidence shows it was issued for rent that was due on 01-09-2009. The Landlord argued that he had the original and gave the Tenants a copy and that the Landlord's original shows 01-10-2009.

The Landlord testified that the Tenants have since paid the Landlord October 2009 and November 2009 rent in full. The Landlord could not provide testimony of the exact dates these rent payments were accepted from the Tenants. The Landlord stated that if receipts were issued to the Tenants for these two months they would have stated "rent not paid" which the landlord would cross out and then write "paid for rent".

Tenant's Application

There was no additional evidence or testimony provided in support of the Tenants' application as no one attended on behalf of the Tenants.

Analysis

Landlord's Application

The Landlord has provided testimony that he has accepted rent payments for October and November 2009 and there is no evidence to support the date when these payments were accepted and if the payments were accepted for "use and occupancy" or if the tenancy was reinstated. As the onus of proof lies with the Landlord, I find that the Landlord has failed to prove that he has not reinstated the tenancy and I hereby dismiss his application, without leave to reapply.

In the presence of contradictory evidence in relation to the 10 Day Notice to End Tenancy and which monthly rent it was issued for (01-09-2009 or 01-10-2009) I hereby find the 10 Day Notice to End Tenancy to be void and of no force or effect.

As the Landlord has not been successful with his application, I hereby decline to award him recover of the filing fee.

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, without leave to reapply.

The 10 Day Notice to End Tenancy for unpaid rent issued on October 15, 2009 is hereby cancelled and is of no force or effect.

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: December 09, 2009.

Dispute Resolution Officer