



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MND, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, damage to the rental unit, retention of the security deposit and recovery of the filing fee. Both parties appeared at the hearing and were provided the opportunity to provide testimony and respond to testimony of the other party.

At the commencement of the hearing, the tenant testified he had not been served with a 10 Day Notice and had not received the hearing documents until yesterday. Discussion ensued concerning service of the hearing documents.

The landlord testified that she posted the Landlord's Application for Dispute Resolution on the tenant's door on November 25, 2009. Upon enquiry, the landlord explained that she did not serve the Notice of Hearing on November 25, 2009 as the Notice of Hearing had not yet been received from the Residential Tenancy Branch. The landlord sent the Notice of Hearing and the landlord's evidence to the tenant via registered mail on December 24, 2009.

Issues(s) to be Decided

Has the landlord sufficiently served the hearing documents upon the tenant?

Analysis

Dispute resolution proceedings are based on the principles of natural justice. Natural justice requires that a respondent be informed of the nature of the claim and the monetary amount sought against them by the applicant. This is one of the many purposes of the Application for Dispute Resolution and the Notice of Hearing. The Act requires that the applicant serve the respondent with notice of dispute resolution hearing, the Application for Dispute Resolution and the applicant's evidence in a manner that complies with section 89 of the Act.

Section 89 of the Act determines the method of service for dispute resolution documents. The landlord has requested an Order of possession. Section 89(2) of the Act provides that a landlord may attach a copy of the Application for Dispute Resolution related to a request for an Order of Possession on the tenant's door. However, the landlord has also applied for a Monetary Order which requires that the landlord serve the tenant as set out under section 89(1). With respect to a landlord serving a tenant, section 89(1) requires the landlord to serve the Application upon the tenant in one of the following ways:

- (a) by leaving a copy with the person;
- (c) by sending a copy by registered mail to the address at which the person resides;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) *[director's orders: delivery and service of documents]*.

Section 90 of the Act provides that documents sent via registered mail are deemed to be received five days later. In this case, the tenant is deemed to have received the Notice of Hearing and the landlord's evidence on December 29, 2009.

The Rules of Procedure provide that evidence may be served upon either party at least five business days, excluding the first and last days, before the dispute resolution proceeding. I have determined that the date of this proceeding is only three clear business days after the tenant is deemed served with the Notice of Hearing and the landlord's evidence.

Since the Landlord's Application for Dispute Resolution was posted on the tenant's door, the landlord did not serve the tenant in a manner that complies with the Act with respect to monetary claims. Therefore, the only portion of the Landlord's Application to be considered is whether the landlord sufficiently served the tenant with the Application that related to the request for an Order of Possession.

I find that by sending the tenant with the Notice of Hearing via registered mail on December 24, 2009 the landlord inhibited the tenant's ability to respond and provide evidence in his defence as the tenant was provided only three clear business days to respond.

In light of the above findings, the landlord's application was dismissed with leave to reapply due to insufficient service of the hearing documents upon the tenant.

As the parties were informed at the hearing, since I have not found sufficient service of the hearing documents, I have not considered the validity of the 10 Day Notice or its service upon the tenant.

Conclusion

The Landlord's Application for Dispute Resolution has been dismissed with leave to reapply due to insufficient service upon the tenant.

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: January 05, 2010.

Dispute Resolution Officer