

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession and a Monetary Order for unpaid rent and to recover the cost of the filing fee from the Tenant for this application.

Service of the amended hearing documents, by the Landlord to the Tenant, was not done in accordance with section 89 of the *Act*. The Landlord argued that he knew the Tenant was not going to accept service of the documents so he taped the amended application documents to the Tenants door on December 9, 2009.

Service of the original hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on December 1, 2009. Mail receipt numbers were provided in the Landlord's documentary evidence. The Tenant is deemed to be served the hearing documents on December 6, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present their evidence orally, in writing, and in documentary form.

Preliminary Issues

The Landlord is seeking an Order of Possession and a Monetary Order for unpaid rent however the Landlord provided testimony and documentary evidence to prove that the Landlord has issued the Tenant the first page of a 10 Day Notice to End Tenancy for unpaid rent. I asked the Landlord on three separate occasions to provide testimony of how the 10 Day Notice to End Tenancy was served to the Tenant, which date it was served, and how many pages were given to the Tenant and each time the Landlord responded by saying "one page" of the 10 Day Notice to End Tenancy was posted to the Tenant's door on November 23, 2009, the date it was signed.

Analysis

The Landlord has provided testimony that only one page of the two page 10 day Notice to End Tenancy were issued to the Tenant which matches the evidence of the one page 10 Day Notice that was submitted by the Landlord.

When I informed the Landlord that I was dismissing his application because he had not proven that both pages of the 10 Day Notice to End Tenancy were served to the Tenant in accordance with the Act, the Landlord began to argue and change his testimony. The Landlord stated that he was searching through his papers and found the “instruction sheet, page 2 of the Notice” and that he now remembers issuing it to the Tenant. I do not accept the Landlord’s argument and I find that his latest testimony is in contradiction of his previous testimony and his documentary evidence.

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 is seeking to end the tenancy due to this breach; however, the Landlord has the burden of proving that the Tenant was served with both pages of the 10 day Notice to End Tenancy, in accordance with the Act.

In the presence of contradictory testimony, I find that the 10 Day Notice to End Tenancy was not served in accordance with the Act and I hereby dismiss the Landlord’s application, without leave to reapply.

Conclusion

The 10 Day Notice to End Tenancy issued on November 23, 2009 is hereby cancelled and is of no force or effect.

I HEREBY DISMISS the Landlord’s 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: January 13, 2010.

Dispute Resolution Officer