

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of the Act, and dealt with an Application for Dispute Resolution by the Landlords for an Order of Possession, a Monetary Order, and to recover the cost of the filing fee from the Tenant for this application.

The Landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on December 29, 2009 the Landlords served the Tenant with the Notice of Direct Request Proceeding via registered mail. An “incomplete” copy of a Canada Post Receipt was submitted in the Landlord’s evidence, listing the Tenant’s name.

Issue(s) to be Decided

The issues to be decided are whether the Landlords are entitled to an Order of Possession for unpaid rent; to a Monetary Order for unpaid rent; to keep the security deposit, and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Analysis

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on December 29, 2009 the Landlord served the Tenant with the Notice of Direct Request Proceeding via registered mail however the Landlord has failed to initiate service of the documents within the required three day time period

and the Landlord failed to complete the registered mail receipt to prove which address the registered mail package was sent to.

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 notice of the Direct Request Proceeding.

In the presence of incomplete information pertaining to the service of the Direct Request Proceeding documents and evidence which supports that service was not effected within three days, I find that the Landlords have failed to establish that service was effected in accordance with the *Act*.

Having found that the Landlord has failed to prove service of the notice of Direct Request Proceeding I have determined that this application be dismissed with leave to reapply.

As the Landlords have not been successful with their claim I decline to award them recovery of the filing fee.

Conclusion

I HEREBY DISMISS the Landlords' application, with 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 22, 2010.

Dispute Resolution Officer