

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This was a reconvened hearing which dealt with an Application for Dispute Resolution by the Landlords seeking an Order for Possession for unpaid rent and a Monetary Order for unpaid rent, to keep the security deposit, and recovery of the filing fee. The Landlord originally applied through the direct request process which, upon review, was scheduled for a conference call hearing in accordance with section 74 of the *Residential Tenancy Act*.

The Interim Decision from the Direct Request Proceeding on December 31, 2009, stipulated that the Landlord was required to serve the Tenant with copies of the Notice of Reconvened Hearing, the Interim Decision, the application for Dispute Resolution, and any evidence that will be introduced at the hearing, in accordance with section 88 of the Act and within **three (3) days** of receiving the Interim Decision.

Preliminary Issues

The Landlord attended the reconvened hearing and testified that Service of the conference call hearing documents was done via certified mail on January 8, 2010. The Canada Post tracking number was provided in the Landlord's testimony.

The Landlord testified that the Tenant vacated the rental unit in January 2010 and that she was no longer seeking an Order of Possession.

The Tenant was not in attendance at the reconvened hearing.

Analysis

The Landlord provided testimony that the hearing package and notice of reconvened hearing were not served to the Tenant until January 8, 2010, eight days after the issuance of the Interim Decision.

Based on the aforementioned, I find that service of the Notice of Dispute Resolution was not effected in accordance with the Interim Decision and Section 88 of the *Residential Tenancy Act* which states that service of Notice of Dispute Resolution must be done within **three (3) days** of receiving the Decision.

To find in favour of an application for a monetary claim, I must be satisfied that the rights of all parties have been upheld by ensuring the parties have been given proper notice to be able to defend their rights. As I have found the service of documents not to have been effected in accordance with the *Act*, I dismiss the Landlords' claim, with leave to reapply.

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

Conclusion

I HEREBY DISMISS the Landlord's claim, 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: February 09, 2010.

Dispute Resolution Officer