

DECISION

Dispute Codes OPR MND MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord and his Agent to obtain an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, for damage to the unit, site or property, to keep all or part of the pet and or damage deposit, and for money owed or compensation for damage or loss under the Act, and to recover the cost of the filing fee from the Tenant for this application.

The Landlord appeared via telephone conference and requested permission to have his wife added into the hearing as she held interest in this application. I granted permission and the Landlord's wife was added into the teleconference.

Issues(s) to be Decided

Are the Landlord and his Agent entitled to an Order of Possession for unpaid rent under section 55 of the *Residential Tenancy Act*?

Are the Landlord and his Agent entitled to a Monetary Order a) for unpaid rent; and b) for damage to the unit, site or property; and c) to keep all or part of the pet and or damage deposit; and d) for money owed or compensation for damage or loss under the Act under sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The Landlord confirmed that the Tenant vacated the rental unit sometime in mid December 2009.

The Agent stated that when they attended the rental unit sometime during mid December 2009 they found the rental unit left unsecured with the door left opened. The

Agent advised that when they entered the rental unit they found that the Tenant had vacated the unit leaving a mess behind.

I then asked the Landlord and his Agent how they served the Tenant with the Notice of Dispute Resolution and the Landlord replied by stating they had sent the package to the Tenant via registered mail. I then asked which address the registered mail was sent to the Agent advised that the hearing documents were sent to the Tenant at the rental address as that was the last known address they had for the Tenant.

I began to explain to the Landlord and his Agent that service was not conducted in accordance with the Act and that I would be dismissing their application with leave to reapply, at which time the Agent became very upset with me and began yelling and screaming at me stating that she served the Tenant based on the instructions she was given.

I then explained that I was an impartial decision maker and that I could not provide the Landlord and his Agent with specific guidance on the best way to locate the Tenant however I could provide them with instructions on how to contact an Information Officer.

The Landlord's Agent continued to display inappropriate behaviour towards me at which time I explained to the Agent that her behaviour was inappropriate at which she replied "I can speak to you any way I want to, you work for the Residential Tenancy Branch don't you...". At this point I told the Landlord and his Agent that the hearing was over and they would receive a copy of my written decision in the mail.

Analysis

The Landlord made an application, on January 11, 2010, for dispute resolution seeking an Order of Possession and a Monetary Order. The evidence supports that the Tenant vacated the rental unit sometime in December 2009 and that service of the Notice of Dispute Resolution package was sent to the Tenant, via registered mail, to an address where the Tenant no longer resides.

Based on the aforementioned I find that service of the Notice of Dispute Resolution was not effected in accordance with Section 89 of the *Residential Tenancy Act* which states that service of Notice of Dispute Resolution, if sent via registered mail, **must be sent to the address at which the person resides.**

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 Landlord's claim, with leave to reapply.

Section 8.7 of the *Residential Tenancy Branch Rules of Procedure* provides that the Dispute Resolution Officer may give directions to a party or their agent who presents rude, antagonistic or inappropriate behaviour during the hearing and if the person does not comply with the Dispute Resolution Officer's direction they can be excluded from the hearing. I informed the Agent that her behaviour was inappropriate however she continued to scream at which time I explained that I was ending the hearing.

As the Landlord has not been successful with this 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 19, 2010.

Dispute Resolution Officer