



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC

Introduction

A substantial amount of documentary evidence and written arguments has been submitted prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the applicant the opportunity to testify at the hearing.

The respondent was served with notice of the hearing, which was posted on her door on February 18, 2010, but did not join the conference call that was set up for the hearing.

All testimony was taken under affirmation.

Issues(s) to be Decided

First of all I want to state that the beginning of the hearing the applicant requested that the second respondent be removed from this application and therefore I have done so.

This is a request for an Order of Possession based on a Notice to End Tenancy for non-payment of rent, a request for outstanding rent and lost revenue totalling \$2250.00, and a request of the respondent bear the \$50.00 cost of the filing fee that was paid for this application for dispute resolution.

However section 89 of the act states:

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be

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given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (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].

(2) An application by a landlord under section 55 *[order of possession for the landlord]*, 56 *[application for order ending tenancy early]* or 56.1 *[order of possession: tenancy frustrated]* must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by registered mail to the address at which the tenant resides;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
- (e) as ordered by the director under section 71 (1)
[director's orders: delivery and service of documents]



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In this case the dispute resolution package and notice of hearing was attached to the door of the rental unit, and therefore I can proceed with a request for an order possession of the filing fee however I am unable to proceed with a request for a monetary order as the documents have not been served in the method required for a monetary order.

Decision and reasons

On February 5, 2010 the landlord personally served a section 46 Notice to End Tenancy for non-payment of rent on an adult living in the rental unit. The tenants have failed to pay the outstanding rent and have not applied to dispute the Notice to End Tenancy.

Based on the foregoing, I find that the tenants are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Therefore since the tenants have failed to comply with the Notice to End Tenancy , pursuant to Section 55, I have issued an immediate Order of Possession.

The landlord(s) is given a formal Order of Possession and the tenant(s) **must** be served with this Order as soon as possible.

I further order that the respondent bear the \$50.00 cost of the filing fee.

The request for a monetary order totalling \$2250.00 is dismissed 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 22, 2010.

Dispute Resolution Officer