

DECISION

Dispute Codes OPR MNR MND FF

Introduction

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

Issues(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent under section 55 of the *Residential Tenancy Act*?

Is the Landlord entitled to a Monetary Order a) for unpaid rent, and b) damage to the unit under section 67 of the *Residential Tenancy Act*?

Background and Evidence

The Landlord appeared and advised that he served the Tenant with the Notice of Dispute Resolution hearing package, in person at the rental unit, on February 2, 2010, five days after the Landlord picked up the package.

The Landlord argued that he served the Tenant with a Notice to End Tenancy for unpaid rent however there was no documentary evidence submitted in support of the Landlord's application.

Analysis

The Landlord provided testimony that he served the Tenant the hearing package from his January 27, 2010 application, on February 2, 2010, by handing the package to the Tenant at the rental unit.

I find that service of the Notice of Dispute Resolution was not effected in accordance with section 59(3) of the *Residential Tenancy Act* (the Act) which stipulates that notices of dispute resolution must be served to the respondent within 3 days of filing the application so in this case service of the hearing documents needed to be initiated by January 30, 2010. 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.

I note that the Landlords did not submit documentary evidence, such as a copy of the 10 Day Notice to End Tenancy, in support of his application.

As the Landlords have not been successful with their application I decline to award them with 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: March 12, 2010.

Dispute Resolution Officer