

DECISION

Dispute Codes OPB, OPC, OPR, MND, MNDC, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call to deal with the landlord's application for the following relief:

- An Order of Possession for breach of a tenancy agreement
- An Order of Possession for cause
- An Order of Possession for unpaid rent or utilities
- A monetary order for damage to the unit, site or property
- A monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement
- A monetary order for unpaid rent or utilities
- An order permitting the landlord to retain the security deposit
- An order to recover the filing fee from the tenant for the cost of this application

The landlord did not attend the hearing, but an agent for the landlord did attend to give evidence. The tenant did not appear.

Issues(s) to be Decided

Is the landlord entitled to an order for any of the above?

Background and Evidence

The agent for the landlord was not able to prove or provide any information about how and when the tenant was served with the Landlord's Application for Dispute Resolution or the notice of hearing documents.

The agent was not able to provide sufficient evidence to support the landlord's application.

Analysis

Section 59 of the *Residential Tenancy Act* states:

59 (3) Except for an application referred to in subsection (6), a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.

Further, the burden of proving damage claims is on the applicant, and that proof requires that the 4 part test for damages be proven based on evidence and supported by receipts:

- Prove the damage or loss;
- Prove that the damage or loss occurred because of a breach of the *Act* or Tenancy Agreement;
- Prove the amounts;
- Prove how the party mitigated the loss.

In the circumstances, I am not able to find that the tenant was aware of the hearing scheduled for today, nor am I able to award any damages in favour of the landlord or issue an Order of Possession. The landlord is not entitled to recover the filing fee from the tenant for the cost of this application.

Conclusion

The landlord's application is hereby 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: May 04, 2010.

Dispute Resolution Officer