

Decision

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

This is the Landlord's application for an Order of Possession for unpaid rent; a Monetary Order for unpaid rent; to apply the security deposit in partial satisfaction of the monetary award; and to recover the cost of the filing fee from the Tenant.

The Landlord's agent gave affirmed testimony.

Preliminary Matters

At the outset of the Hearing, the Landlord's agent testified that the Tenant had moved out of the rental unit. The Landlord's application for an Order of Possession is therefore dismissed.

The Landlord's agent testified that the Notice to End Tenancy was posted on the Tenant's door on March 3, 2010, at 9:25 a.m.

The Landlord's agent testified that the Notice of Hearing documents were sent via registered mail to the rental unit on March 17, 2010. The Landlord's agent testified that the documents were returned to the Landlord, unclaimed.

The Landlord's agent was not certain of when the Tenant moved out, but testified that the Tenant was gone by March 29, 2010 when the Landlord's agent attended at the rental unit to perform a move-out inspection. The Landlord's agent testified that the Tenant did not give the Landlord a forwarding address, and that the Landlord had no other contact information for the Tenant (i.e. parent's address).

The Landlord's agent testified that the Tenant was in the rental unit at the time the Notice to End Tenancy was posted on the Tenant's door, because the Tenant had removed the Notice to End Tenancy from the door.

Analysis

Section 89 of the Act deals with service provisions for Applications for Dispute Resolution. Section 89 states:

Special rules for certain documents

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 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].

(emphasis added)

The Notice of Hearing documents were mailed to the Tenant, at the rental unit, on March 17, 2010. The Landlord's agent did not know when the Tenant moved out of the rental unit, only that it was sometime between March 3 and March 29, 2010. Therefore I am not satisfied that the documents were sent to the address where the Tenant resided. The Landlord has not proven service of the Notice of Hearing Documents on

the Tenant and I dismiss the Landlord's applications for a Monetary Order for unpaid rent and against the security deposit, with leave to re-apply.

The Landlord has not been successful in its application and is not entitled to recover the cost of the filing fee from the Tenant.

Conclusion

The Landlord's applications for an Order of Possession and to recover the cost of the filing fee are dismissed.

The remainder of the Landlord's application is dismissed with leave to re-apply.

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.

April 30, 2010

Date of Decision
