

DECISION

Dispute Codes OPR OPB MNDC MNSD 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 breach of an agreement, and a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep all or part of pet damage deposit or security deposit, for unpaid rent or utilities, for damage to the unit, site or property, and to recover the cost of the filing fee from the Tenant for this application.

The Landlord appeared and gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

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

Is the Landlord entitled to a Monetary Order under sections 38, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The Landlord testified that she served the Tenant with the notice of dispute resolution package sometime in December 2009 by pushing it through the door at an office where the Tenant allegedly carries on business. The Landlord argued that she spoke with the person who was working in the office next door who informed her that the male who worked next door kept varied business hours. The Landlord stated that this Tenant continues to change his business address and she does not know where the Tenant currently resides.

The Landlord advised that this tenancy ended in March 2008.

Analysis

Section 89 of the *Residential Tenancy Act* provides that service of an application for Dispute Resolution 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*].

The Landlord provided evidence that the hearing package was served to the Tenant “sometime” in December 2009, by placing it through a door at an office the Landlord believes to be the Tenant’s place of business. I cannot determine with any certainty which date the Landlord served the hearing package and given the testimony on how service was conducted I find the Notice of Dispute Resolution has not been served in accordance with Section 89 of the Act.

Having found that service has not been effected in accordance with the Act and in light of the Landlord’s testimony that the tenancy ended in March 2008, which now exceeds the time by which an application for dispute resolution can be made pursuant to section 60 of the Act, I hereby dismiss the Landlord’s application without leave to reapply.

As the Landlord has not been successful with her application, I decline to award her recovery of the filing fee.

Conclusion

I HEREBY DISMISS the Landlord's claim, without 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 26, 2010.

Dispute Resolution Officer