

DECISION

Dispute Codes OPR MNR MNSDC FF
CNR

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, to keep the security deposit in partial satisfaction of their claim, for money owed or compensation for damage or loss under the Act, and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed seeking an Order to cancel the notice to end tenancy for unpaid rent.

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

The Tenant did not appear despite filing her own application for dispute resolution scheduled for the same hearing date and time.

All of the testimony and documentary evidence was carefully considered.

Issue(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*?

Is the Tenant entitled to an Order under section 46 of the *Residential Tenancy Act*?

Background and Evidence

The Landlord testified that he initially served the Tenant with his Notice of Dispute Resolution package via registered mail on the Monday after filing his application. The Landlord could not provide testimony with the tracking number of the registered mail

package and argued that the Tenant refused to pick up the registered mail so it was returned to the Landlord. The Landlord stated that he then posted the hearing package to the Tenant's door last week around June 16, 2010.

The Landlord advised this was a verbal month to month tenancy agreement which began September 1, 2009. The rent is payable on the first of each month in the amount of \$950.00 and the Tenant is responsible for 60% of the cost of utilities. The Landlord testified the Tenant paid a security deposit of \$475.00 on August 22, 2009.

The Landlord confirmed that he did not provide documentary evidence in support of his claim and that he attended today's hearing to obtain an Order of Possession to "get the Tenant out" and for \$3300.00 which includes unpaid rent for March 2010, May 2010, and June 2010, plus an estimated amount of \$150.00 for utilities for these three months.

Analysis

Tenant's Application

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

In the absence of the Applicant Tenant, the telephone line remained open while the phone system was monitored for ten minutes and no one on behalf of the Applicant Tenant called into the hearing during this time. Based on the aforementioned I find that the Tenant has failed to present the merits of her application and the application is hereby dismissed, without leave to reapply.

Section 55(1) of the Act provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing, the landlord makes an oral request for an order of possession, and the Director dismisses the tenant's application or upholds the landlord's notice. Based on the aforementioned and having dismissed the Tenant's application above, I hereby grant the Landlord an Order of Possession.

Landlord's Application

The Landlord did not provide evidence that the hearing packages were in fact served to the Tenant in accordance with the Act.

In the absence of the requisite proof from the Landlord, I find that service of the Notice of Dispute Resolution was not effected in accordance with Section 89 of the *Residential Tenancy Act*. To find in favour of an application for a monetary claim, I must be satisfied that the rights of all parties have been upheld by ensuring the parties have been given proper notice to be able to defend their rights. 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.

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

Conclusion

I HEREBY FIND that the landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This order must be served on the Respondent Tenant and may be filed in the Supreme Court and enforced as an order of that Court.

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: June 21, 2010.

Dispute Resolution Officer