

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This was a reconvened hearing which dealt with an Application for Dispute Resolution by the Landlord seeking an Order for Possession and a Monetary Order for unpaid rent, to keep the security deposit, and to recover the cost of the filing fee from the Tenants. The Landlord originally applied through the direct request process which, upon review, was scheduled for a conference call hearing in accordance with section 74 of the *Residential Tenancy Act*.

Issues(s) to be Decided

Is the Landlord entitled to an Order of Possession and a Monetary Order under sections 55, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

At the onset of the hearing the Landlord advised that the property manager served the Tenants with notice of reconvened hearing on May 20, 2010 at 10:26 a.m. The Landlord could not explain how service could be completed on May 20, 2010 when the decision to reconvene was not written until May 27, 2010, and the Notice of Hearing was not created until May 28, 2010.

Analysis

Residential Tenancy Branch Rules of Procedure 3.3 stipulate that if a respondent(s) does not attend the dispute resolution proceeding, the applicant must prove to the Dispute Resolution Officer that each respondent was served as required under the Act. If served in person, the person who served the documents must either attend the dispute resolution proceeding as a witness, either in-person or by conference call.

The landlord testified that the property manager served the notice of the reconvened hearing, to the Tenants, in person on May 20, 2010 at 10:26 a.m. which is seven days before the decision was made.

The May 27, 2010 decision stipulates “Notices of Reconvened Hearing are enclosed with this decision for the application to serve upon the tenant, including all other required documents, within **three (3) days** of receiving this decision in accordance with section 88 of the *Act*.”

I find that service of the Notice of Reconvened Hearing was not effected in accordance with the *Act*, as service was not initiated within the three (3) day time limit and the property manager did not attend to testify that service was done, as stated by the Landlord.

To find in favour of an application 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.

Conclusion

I HEREBY DISMISS the Landlord's application, 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: July 15, 2010.

Dispute Resolution Officer