



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR MNR MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent, a Monetary Order for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenants for this application.

Issues(s) to be Decided

1. Is the Landlord entitled to an Order of Possession for unpaid rent under section 55 of the *Residential Tenancy Act*?
1. Is the Landlord entitled to a Monetary Order under section 67 of the *Residential Tenancy Act*?

Background and Evidence

The Landlord testified that a neighbour had seen the Tenant move out of the rental unit on approximately October 14, 2010. When the Landlord did not receive rent payment due October 15, 2010 he posted a 10 Day Notice to End Tenancy on the Tenant's door and he could see inside the rental unit through the window and determine the suite was empty. He later posted a notice of entry and has since inspected the unit and confirmed the Tenant has abandoned the unit.

He stated that he served the Tenant with the hearing documents for today's hearing November 5, 2010 via registered mail addressed to the abandoned rental unit.

Analysis

The evidence supports the Notice of Dispute Resolution packages were sent via registered mail to the Tenant to an address where the Tenant no longer resides. I find that service of the Notices of Dispute Resolution was not effected in accordance with Section 89 of the *Residential Tenancy Act* which states that service of Notice of Dispute Resolution, if sent via registered mail, must be sent to the address at which the person resides.

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 find that he is not entitled to recover the cost of the filing fee from the Tenant.

Section 44 (1) (d) of the Act provides that a tenancy ends when the tenant vacates or abandons the rental unit. In this case the Tenant abandoned the unit sometime before October 15, 2010 and therefore the Landlord has regained possession of the unit.

Conclusion

I HEREBY DISMISS the Landlord's claim, 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: November 30, 2010.

Dispute Resolution Officer