



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MND, MNSD, MNDC, FF

This hearing was scheduled to deal with the landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, damage to the rental unit, damage or loss under the Act, regulations or tenancy agreement, authorization to retain the security deposit and recovery of the filing fee. Both parties appeared at the hearing.

Upon enquiry about service of hearing documents I determined that the landlord was uncertain as to when the tenants were served with the hearing documents. The tenants were clear in stating that they were served with the landlord's Application for Dispute Resolution and notice of hearing on November 5, 2010.

Since the landlord was uncertain as to when he served the hearing documents I accepted that they were served upon the tenants on November 5, 2010. I noted that the hearing documents were available for pickup by the landlord on October 19, 2010 and the landlord could not explain why it took until November 5, 2010 to serve them upon the tenants.

The parties were also in dispute as to whether a 10 Day Notice had been served upon the tenants on October 6, 2010. The tenants claimed they were given a letter from the regional district on October 6, 2010 but not a 10 Day Notice. I also noted that I had not been provided a copy of a 10 Day Notice despite the landlord's claims that he had submitted a copy for the Residential Tenancy Branch at the time of making the application. The tenants claimed that they had not received a copy of the 10 Day Notice in the hearing package.

Section 59 of the Act requires that a person who makes an Application for Dispute Resolution must give a copy of the application to the other party within 3 days of making the application. Rule 3.1 of the Rules of Procedure require that an applicant serve the other party with the Application for Dispute Resolution and copies of the notice of hearing and any other evidence accepted by the Residential Tenancy Branch with the application.

In accordance with the above, the landlord was required to serve the tenants with the Application for Dispute Resolution, the notice of hearing and a copy of the 10 Day Notice within three days of October 19, 2010.

The onus to prove documents have been sufficiently served is upon the party required to serve documents. Given the landlord's uncertainty during the hearing I was not satisfied the tenants were sufficiently served with all of the hearing documents or within a reasonable amount of time after making the application. Therefore, I dismissed the landlord's application with leave to reapply.

The landlord is at liberty to serve another 10 Day Notice and make another Application for Dispute Resolution should the tenants fail to pay rent. As the landlord also indicated he wished to end the tenancy for cause the landlord was informed that he remains at liberty to issue a 1 Month Notice to End Tenancy for Cause as necessary.

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 12, 2010.

Dispute Resolution Officer