

DECISION

Dispute Codes:

OPR, MNR, MNSD, MNDC, MND, FF

Introduction

This hearing was convened in response to an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows.

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for damages to the unit – Section 67
3. An Order to keep the security deposit – Section 38
4. An Order of Possession for unpaid rent – Section 55
5. A Monetary Order for damage and loss –Section 67
6. An Order to recover the filing fee for this application - Section 72.

The landlord attended the conference call hearing. The tenant did not. The landlord testified that the tenant may have vacated the rental unit around September 20, 2010, but was not sure as the tenant notified the landlord of their move after they had vacated. The tenant had not provided a forwarding address. In early October – approximately 10 -14 days later - the landlord claims they did a credit check and determined they had located the tenant and used this address to then send the registered mail, containing the Notice of Hearing and application, to the tenant. The landlord did not provide the tracking number for the registered mail not had they used the tracking information to determine if the tenant had received it - giving credence to the validity of the address used. The landlord did not employ any other means to locate the tenant.

Section 89 of the Act states as follows(**emphasis for ease**)

Special rules for certain documents

- 89 (1) An application for dispute resolution** or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, 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
- (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].

Section 89 of the Act is deliberately designed to give credibility to the presumption of service if a party is served in accordance with the ways listed. I find the landlord's method of locating and serving the tenant to be ambiguous and, on a balance of probabilities, inconclusive, and therefore, unreliable – and not within the provisions established in the Act. As a result, I am not satisfied the tenant was served with notice of this hearing pursuant to Section 89 of the Residential Tenancy Act.

Therefore, **I dismiss** the landlord's application, but I do so with leave to reapply. None of the potential merits of this application were heard.

Conclusion

The landlord's application **is dismissed**, 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*.