



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant, via a courier service, on June 23, 2011. The Landlord submitted a receipt that corroborates this statement. The Agent for the Landlord stated that the documents were sent by courier as postal service was disrupted at this time.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Agent for the Landlord stated that the tenancy in this rental unit began on November 01, 2007; that the rent is based on monthly income and the Tenant was required to pay monthly rent of \$470.00 during the latter portion of the tenancy; and that rent was due on the first day of each month.

The Agent for the Landlord stated that the Tenant did not pay any rent for May or June of 2011.

The Agent for the Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of June 23, 2011, was mailed to the rental unit on June 08, 2011. The Notice declared that the Tenant owed \$940.00 in rent that was due on June 01, 2011.

The Agent for the Landlord stated that the building manager believes the Tenant vacated the rental unit sometime prior to June 14, 2011, as there was no food in the rental unit and no electricity to the unit on that date.

Analysis

Sections 89(1)(c) and 89(2)(b) of the *Act* authorizes landlords to serve an Application for Dispute Resolution to a tenant by sending a copy by registered mail to the address at which the person resides. As postal service was disrupted on June 23, 2011, I find that it was reasonable for the Landlord to send the Application for Dispute Resolution to the Tenant via courier service.

Based on the evidence presented by the Landlord, I am not satisfied that the Tenant was residing at the rental unit on June 23, 2011. In reaching this conclusion I was heavily influenced by the testimony of the Agent for the Landlord, who stated that she had been told by the building manager that he believed the rental unit had been vacated sometime prior to June 14, 2011. Based on the building manager's observations that there was no food or electricity in the unit on June 14, 2011, I find the conclusion that it had been vacated to be reasonable.

As it appears the rental unit was vacated on, or before, June 14, 2011, I cannot conclude that the Tenant was served notice of this hearing pursuant to sections 89(1)(c) and 89(2)(b) of the *Act*. In reaching this conclusion, I specifically note that the *Act* requires the Application for Dispute Resolution to be sent to an address where the person resides, and I am not satisfied that the Tenant was residing at this rental unit when the Application for Dispute Resolution was sent on June 23, 2011.

Conclusion

As I am not satisfied that the Tenant was served with notice of this hearing, I dismiss the Landlord's Application for Dispute Resolution, 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 12, 2011.

Residential Tenancy Branch