



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, a monetary order and to recover the filing fee.

The landlord's agent appeared, gave affirmed testimony and was provided the opportunity to present her evidence orally and in documentary form, and make submissions to me.

The tenant did not appear at the hearing.

The agent testified that the Application and Notice of Hearing documents were delivered to the tenant via personal delivery by the relief manager of the premises, who was on holiday at the time of the hearing. The agent stated that she thought the date of delivery was on July 20, 2011, but could not state for a certainty that it was.

Upon further query, the agent testified that she was unsure of the date the Notice to End Tenancy was delivered to the tenant. Again that document was delivered by the relief manager.

Issue(s) to be Decided

Has the tenant breached the Residential Tenancy Act (the "Act") or tenancy agreement, entitling the landlord to an Order of Possession and a monetary order?

Background and Evidence

The landlord's agent provided testimony that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"); however the agent could not provide evidence or testimony or confirmation as to the date the Notice was served. Further the agent could not provide the date the Notice of Hearing was served on the tenant.

The landlord did not provide a proof of service of the application for dispute resolution in support of their Notice to End Tenancy.

Analysis

Based on the foregoing testimony and sufficient evidence, and on a balance of probabilities, I find as follows:

The landlord provided insufficient evidence to show the tenants was issued a 10 Day Notice to End Tenancy, which is required under section 52 of the Act.

Residential Tenancy Branch Rules of Procedure 3.3 states that if the respondent, the tenant in this case, does not attend the dispute resolution proceeding, the applicant must prove to the Dispute Resolution Officer that the respondent was served as required under the Act.

The person who served the documents must either attend the dispute resolution proceeding as a witness, or if not available to attend, the applicant may submit as evidence an affidavit of service, sworn by the person who served the documents.

The landlord provided insufficient evidence to prove the tenant was served notice of the hearing, required under section 89 of the Act and the Residential Tenancy Branch Rules of Procedure.

Based on the above, I order the landlord's Application for Dispute Resolution, **dismissed, without leave to reapply.**

The landlord is at liberty to issue another Notice to End Tenancy and file an Application for Dispute Resolution.

Conclusion

The Landlord's Application for Dispute Resolution is dismissed.

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: August 12, 2011.

Residential Tenancy Branch