



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, to keep the security deposit, and to recover the cost of the filing fee from the Tenants for this application.

Service of the hearing documents, by the Landlord to the Tenant, was sent via registered mail September 22, 2011. Mail receipt numbers for one Canada Post registered mail package was provided in the Landlord's verbal testimony.

The Landlord appeared at the teleconference hearing, gave affirmed testimony, was provided the opportunity to present their evidence orally, in writing, and in documentary form. No one appeared on behalf of the Tenants.

Issue(s) to be Decided

1. Has service been conducted in accordance with the *Residential Tenancy Rules of Procedure*?
2. Has the Landlord met the burden of proof to obtain an Order of Possession and a Monetary Order pursuant to sections 55 and 67 of the *Residential Tenancy Act*?

Background and Evidence

The Landlord affirmed that one package was sent to the two Tenants on September 22, 2011 via registered mail and included the hearing documents and all of the Landlord's evidence which they wished to rely on for this application, such as a copy of the tenancy agreement and the 10 Day Notice.

Upon review of the documents before me I informed the Landlord that only one page of evidence was received by the *Residential Tenancy Branch* in the form of a fax transmission received on October 12, 2011, which was a late submission of evidence. The Landlord stated that a second transmission of eight pages of evidence was sent to the *Residential Tenancy Branch* on October 12, 2011, which included among other things, a copy of the 10 Day Notice and the tenancy agreement. I informed the Landlord

that this evidence is not indicated on the electronic file as being received, nor has it been placed on the hard copy file.

Analysis

Section 89(1) of the *Residential Tenancy Act* and Section 3.1 of the *Residential Tenancy Rules of Procedures* determines the method of service for documents. The Landlord has applied for an Order of Possession and a Monetary Order which requires that the Landlord serve **each** respondent as set out under *Residential Tenancy Rules of Procedures*. In this case only one package has been sent to the two Tenants. Therefore, I find there to be insufficient evidence before me to prove which Tenant was served notice of this proceeding.

The hearing package contains instructions on evidence and the deadlines to submit evidence, as does the Notice of Hearing provided to the Landlord. That being said the Landlord did not serve their evidence to the *Residential Tenancy Branch* within the required timeframes and therefore did not reach the file in time for today's hearing.

The Notice to End Tenancy document is not a mere technicality. In fact, it is hard to imagine another document being more relevant or material to the Landlord's claim, in particular when they are asking to end this tenancy based on that document.

The responsibility of proving a claim is on the person making the claim. As the Landlord failed to provide a copy of the Notice in accordance with the *Residential Tenancy Rules of Procedure*, I find the Landlord has provided insufficient evidence to prove their claim.

As service has not been proven to be conducted in accordance with the Act, I dismiss the claim, with leave to reapply. No finding has been made pertaining to the 10 Day Notice.

Conclusion

The Landlord's application is HEREBY 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*.

Dated: October 19, 2011.

Residential Tenancy Branch