



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This conference call hearing was convened in response to the landlord's application for an Order of Possession and a Monetary Order for unpaid rent. By way of background, on October 28th, 2011 the landlord submitted an application for an order to end the tenancy early under Section 56(1) of the *Residential Tenancy Act* ("The Act"). A review of that application on November 7th, 2011 identified a discrepancy in the amount of unpaid rent and whether the 10 Day Notice to End Tenancy remained effective, which resulted in the decision that this matter be reconvened as a participatory hearing.

The landlord participated in the hearing and provided affirmed testimony. At the outset, the landlord stated that the tenants vacated the rental unit sometime in August 2011, and that the female tenant returned in October to empty the unit. Therefore the landlord's application for an Order of Possession is withdrawn. The landlord said that he has been able to make contact with the male tenant's father, and that he received information that the male tenant was incarcerated.

The landlord testified that he served the Notice of Direct Request to the tenants by way of registered mail sent on October 28th, 2011, and that it was returned to him by Canada Post. The landlord stated that the tenants had \$102.00 outstanding rent for September 2011 and unpaid rent for October 2011.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order, and if so for what amount?

Analysis and Conclusion

Section 59(3) of the Act provides that a party applying for dispute resolution must serve a copy of the application to the other party named in the dispute. Based on the information provided by the applicant, neither respondent was served in accordance with the Act. The Rules of Procedure also specify that the applicant must serve the respondent with a copy of the notice of a dispute resolution hearing provided by the Residential Tenancy Branch.

Accordingly I dismiss the landlord's application for an Order of Possession. At the hearing I implied that the landlord had an entitlement for the loss of rental income; but upon reflection, in the interest of administrative fairness I must dismiss the landlord's application for a monetary order with leave to reapply. The landlord may make an application for substituted service pursuant to Section 71(1) of the Act.

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 28, 2011.

Residential Tenancy Branch