



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for an Order of Possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the filing fee from the tenant for the cost of this application.

An agent for the landlord company attended the conference call hearing and provided evidence in advance of the hearing. Despite being served with the Landlord's Application for Dispute Resolution and notice of hearing by registered mail on January 23, 2012, the tenant did not attend. The landlord's agent provided a copy of a Canada Post tracking result detail print-out which shows that the documents were sent on January 23, 2012. The Landlord's Application for Dispute Resolution was filed with the Residential Tenancy Branch on January 17, 2012, and the notice of hearing was issued to the landlord by the Branch on January 18, 2012. Although the application was made on the 17th of January, 2012, I find that the landlord would not have been able to serve the tenant prior to receiving the notice of hearing, which is dated January 18, 2012. The *Residential Tenancy Act* states:

59 (3) Except for an application referred to in subsection (6), a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.

The application before me does not include a request for an order that a different period be specified for such service, and beyond that provision, I have no discretion to make any orders requested by the landlord. The landlord has failed to serve the tenant within 3 days of receiving the notice of hearing, and I find that the landlord's application cannot succeed due to the provision in section 59 (3) above.

During the discussions with respect to service upon the respondent/tenant, prior to affirming the landlord's agent, the landlord's agent stated that the tenant has moved from the rental unit, and therefore, the landlord's application for an Order of Possession is withdrawn in any event. The landlord's agent further stated that the agent became ill

after filing the application and was away from work as a result of that illness. The notice of hearing was provided to the landlord's agent by the Residential Tenancy Branch via email, and due to confidentiality reasons, no one else in the office was able to open or print the email and serve the documents in accordance with Section 59 (3). The documents were served by registered mail upon the tenant once the landlord's agent returned to work from that illness. The landlord's agent further stated that in a previous hearing where the landlord failed to serve the application within 3 days of making it, the dispute resolution office in that case found that the reasons were reasonable, and continued with the hearing. The reasons that the application in that case was not served within 3 days were not provided to me at this hearing.

I find that if the hearing were to continue, the tenant may be prejudiced as a result of the landlord's failure to comply with Section 59 (3), however, due to the fact that the landlord has withdrawn the application for an Order of Possession, the landlord would not be prejudiced by a dismissal of the remaining application for a monetary order, with leave to reapply. I find that the landlord must serve the tenant within 3 days of making an application, the landlord failed to do so in this case, and the landlord has not applied for an order permitting the landlord to serve the application within a different period. Therefore, the application for a monetary order before me is hereby dismissed with leave to reapply.

Conclusion

For the reasons set out above, the landlord's application for an Order of Possession is hereby dismissed without leave to reapply, as withdrawn.

The landlord's application for a monetary order is hereby dismissed with leave to reapply.

Since the landlord has not been successful with the application before me, I decline to order that the landlord recover the filing fee from the tenant for the cost of this application.

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: February 10, 2012.

Residential Tenancy Branch