



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of that amount. At the beginning of the hearing, the Landlord said the tenancy has ended and as a result, she withdrew her application for an Order of Possession.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail. According to the Canada Post receipt provided by the Landlord, the hearing package was mailed on February 6, 2012. The Section 59 of the Act says that an application for dispute resolution must be served on the other party no later than 3 days after filing the application. The Landlord filed her application on February 2, 2012. Consequently, I find that the Landlord has not complied with s. 59 of the Act.

Furthermore, s. 90 of the Act says a document delivered by mail is deemed to be received 5 days later. This means the Landlord's hearing package was deemed to have been received by the Tenant on February 11, 2011. However, the Landlord said it was not until February 11, 2012 that she discovered that the Tenant had vacated the rental unit and she found the Canada Post registered mail notification card in the mail box at that time. Consequently, I find that the Tenant has not been served with the Landlord's hearing package as required by the Act (or at all) and the Landlord's application for unpaid rent and to keep the security deposit is dismissed with leave to reapply.

Conclusion

The Landlord's application for an Order of Possession and to recover the filing fee is dismissed without leave to reapply. The Landlord's application for unpaid rent and to keep the security deposit is 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: February 22, 2012.

Residential Tenancy Branch