



Dispute Resolution Services

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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 those amounts.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") on February 29, 2012 by registered mail to the rental unit address and he provided a copy of a receipt as evidence of that. According to the Canada Post online tracking system, the Tenant did not pick up the mail. During the hearing the Landlord gave evidence that he was able to contact the Tenant shortly after issuing him a 10 Day Notice on February 10, 2012 and at that time the Tenant advised him that he was working in Saskatchewan but had been laid off and could not afford to travel to the rental unit to remove his belongings. The Landlord said he has been unable to contact the Tenant since that time.

At the end of the hearing, I advised the Landlord that I would issue him a Monetary Order for unpaid rent, however, after reviewing all of the evidence, I find on a balance of probabilities that the Tenant likely did not receive the Landlord's hearing package because he was no longer residing in the rental unit at that time. Consequently, I find that the Tenant has not been served with the Landlord's hearing package as required by s. 89 of the Act and the Landlord's application is dismissed with leave to reapply. However, the following sections of the Act however may be of assistance to the Landlord:

Section 24(1) of the Regulations to the Act says,

- (b) *"a Landlord may consider that a tenant has abandoned personal property if the tenant leaves personal property on residential property that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent."*

Section 24(2) of the Regulations to the Act says,

"The Landlord is entitled to consider the circumstances described in paragraph (1)(b) as abandonment only if,

- (a) *The landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or*
- (b) *The circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.*

Section 39 of the Act says that “*if a tenant does not give a Landlord a forwarding address in writing within one year after the end of the tenancy, the landlord may keep the security deposit and the right of the tenant to the return of the security deposit is extinguished.*”

Conclusion

The Landlord's application is dismissed with leave to reapply within the 2 year time limit set out under s. 60 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: March 14, 2012.

Residential Tenancy Branch