



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MND FF
 CNR LAT RR

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the Landlord and the Tenants.

The Landlord filed on January 14, 2013, seeking an Order of Possession for unpaid rent or utilities, and a Monetary Order for: unpaid rent or utilities; for damage to the unit, site or property, and to recover the cost of the filing fee from the Tenants for this application.

The Tenants filed on December 28, 2012, seeking an Order to cancel a notice to end tenancy for unpaid rent and to be authorized to change the locks on the rental unit and allow them reduced rent for services or facilities agreed upon but not provided.

The Landlord appeared at the teleconference; however, no one appeared on behalf of the Tenants.

Issue(s) to be Decided

1. Has the Landlord proven that service of her application has been conducted in accordance with the *Residential Tenancy Act*?
2. Should the Tenants' application be dismissed with or without leave to reapply?

Background and Evidence

At the outset of this proceeding the Landlord advised that the Tenants vacated the property on approximately January 10, 2013 and did not give her a forwarding address. She confirmed that she served the Tenants with copies of her application and notice of hearing documents by sending one package addressed to both Tenants to the rental unit by registered mail, and by posting a copy to the rental unit door. The Landlord could not provide the Canada Post tracking information during the hearing.

I attempted to explain to the Landlord that she had not served the documents in accordance with the Act and that I would be dismissing her application with leave to reapply. The Landlord would not listen to my instructions and continued to speak over

me when I was attempting to explain to her that I could not guide her in how to proceed. I also attempted to provide the Landlord instructions to contact the *Residential Tenancy Branch* for further guidance; however, she continued to speak over top of me. At that point I told the Landlord that I would be ending the hearing.

Analysis

Landlord's application

The Landlord advised the Tenants vacated the property on January 10, 2013, and that she mailed and posted her application for dispute resolution and hearing documents to the rental unit. The Landlord's application was filed January 14, 2013, after the Tenants had already vacated the property.

The evidence supports the Notice of Dispute Resolution packages were sent via registered mail, in one envelope, to the Tenants at an address where the Tenants no longer reside. Accordingly, I find that service of the Notices of Dispute Resolution were not effected in accordance with Section 89 of the *Residential Tenancy Act* which states that if the application is for a Monetary Order then service of the Notice of Dispute Resolution, if sent via registered mail, must be sent to the address at which the person resides.

To find in favour of an application for a monetary claim, I must be satisfied that the rights of all parties have been upheld by ensuring the parties have been given proper notice to be able to defend their rights. As I have found the service of documents not to have been effected in accordance with the *Act*, I dismiss the Landlord's claim, with leave to reapply.

As the Landlord has not been successful with her application, I find that she is not entitled to recover the cost of the filing fee.

Tenants' application

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

While the Respondent attended the hearing by way of conference call, the Applicant did not.

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of the applicant Tenants, the telephone line remained open while the phone system was monitored for ten minutes and no one on behalf of the applicant Tenants called into the hearing during this time.

Accordingly, in the absence of any evidence or submissions from the Tenants I order the application dismissed without liberty to reapply.

Conclusion

I HEREBY DISMISS The Landlord's application, with leave to reapply.

I HEREBY DISMISS the Tenants' application, without 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: January 30, 2013

Residential Tenancy Branch

