



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNR, MNSD, FF

Introduction

This hearing concerns the landlords' application for an order of possession / a monetary order as compensation for unpaid rent / retention of the security deposit / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlords are entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Near the start of this hearing the landlord stated that a previous hearing was held in the dispute between these parties. I then determined that following an application by the tenant for cancellation of a notice to end tenancy for unpaid rent, a hearing was convened on February 12, 2013. In the result, pursuant to the decision dated February 12, 2013, an order of possession was issued in favour of the landlord. A subsequent application for review by the tenant was dismissed, and the decision and order of February 12, 2013 were upheld.

In this present hearing the landlord stated that he has now served the order of possession, and has obtained a writ of possession. Accordingly, the current application for an order of possession is redundant and I consider it to be withdrawn.

The landlord stated that he served the hearing package for this hearing by registered mail. The tenant claimed that he had just picked up the hearing notice, and as he wished to have more time to prepare for the hearing, he requested an adjournment. As the landlord was unable to provide the Canada Post tracking number for the registered mail, I could not determine the deemed date of service pursuant to section 90 of the Act, which speaks to **When documents are considered to have been received.**

The landlord also claimed to have sent an amended application for dispute resolution to the tenants by way of registered mail, and provided the Canada Post tracking number for that particular item. The Canada Post website informs that the registered mail was accepted at the Post Office on March 9, 2013, and that on March 12, 2013 a notice card was left with the tenants, informing them where the item can be picked up.

Documentary evidence in support of the landlord's current application is limited to the application for dispute resolution filed on February 15, 2013, and the notices of hearing for each tenant. Should they exist, there is no copy of a tenancy agreement, or a description of particulars around work in exchange for rent, or a 10 day notice to end tenancy, or an amended application for dispute resolution before me in evidence.

Analysis

While the tenants presently still reside in the unit, the landlord claims he has served them with the order of possession and has obtained a writ of possession.

In the absence of sufficient documentary evidence, the application for a monetary order for unpaid rent and authority to retain the security deposit, are hereby dismissed with leave to reapply. The application to recover the filing fee for this particular application is hereby dismissed.

Conclusion

The application for an order of possession which has already been issued is withdrawn.

The application to recover the filing fee is hereby dismissed.

The remaining aspects of the application are hereby 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: March 13, 2013

Residential Tenancy Branch

