



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MND, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and damages pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 2:53 p.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 2:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

At the commencement of this hearing, I advised the landlord that two individuals from the Residential Tenancy Branch were listening into the teleconference hearing for staff training and development purposes. The landlord said that he had no objection to their listening into the hearing. These two individuals did not participate in any way in the hearing.

At one stage in the hearing, a technical problem occurred whereby the landlord could hear me, but I could not hear the landlord. After checking with the TELUS teleconference system information available to me, I determined that the landlord had remained connected to the teleconference hearing and had not removed himself from the teleconference. I advised the landlord that I could not hear him, to disconnect from the hearing and attempt to reconnect. As he could hear my instructions, he disconnected and reconnected successfully to the hearing a few minutes later. The hearing proceeded without further incident. I ensured that nothing was said that had a bearing on this hearing while the landlord was not connected with the hearing. I also

repeated the question I was asking the landlord when the technical problem with the hearing occurred.

Issues(s) to be Decided

Has the landlord demonstrated service of his documents to the tenant in accordance with the *Act*? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord testified that he believed that this tenancy commenced over a year ago. Although he knew that there was a written Residential Tenancy Agreement with the tenant, he did not have a copy of that Agreement with him at the hearing. He said that the tenant's monthly rent was set at \$900.00, payable on the first of each month. He said that the tenant had paid a \$450.00 security deposit over a year ago.

The landlord's original application for a monetary award as for \$4,000.00. He testified that \$5,000.00 was owing as of the date of this hearing.

Neither party provided any written evidence for this hearing. The only written information provided by either party was the following notation in the Details of the Dispute section of the landlord's application:

Failure to pay rent. Currently 4000.00 owing.

Preliminary Issue – Service of Documents

The landlord testified that a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was handed to the tenant by the former manager of this property on July 16, 2013. The landlord did not enter into written evidence a copy of the 10 Day Notice. The landlord did not provide any Proof of Service document from the former manager who allegedly served the 10 Day Notice to the tenant. The landlord said that the former manager was living in a remote part of the province and was unavailable for this hearing.

As I was not satisfied that the landlord had met the test required to demonstrate service of the 10 Day Notice to the tenant in accordance with section 88 of the *Act*, I advised the landlord that I was dismissing his application for an Order of Possession based on the 10 Day Notice with leave to reapply.

The landlord testified that he sent the tenant a copy of his dispute resolution hearing package by registered mail on September 10, 2013. Although he said that he had a copy of the Canada Post Tracking Number, he did not have it with him and had no one

available to retrieve that tracking number during the hearing. As I was not satisfied that the landlord had demonstrated to the extent necessary that he had served the tenant with a copy of his dispute resolution hearing package in accordance with section 89 of the *Act*, I advised the landlord of my decision to dismiss his application for dispute resolution with leave to reapply.

In reaching this decision, I wish to emphasize that I have not considered the merits of the landlord's 10 Day Notice allegedly served on July 16, 2013, nor have I considered in any way whether there is outstanding rent owing that could lead to an end to this tenancy. My reason for dismissing the landlord's application with respect to the 10 Day Notice is limited to his failure to demonstrate service of the 10 Day Notice to the tenant and a copy of the landlord's application for dispute resolution pursuant to section 89(2) of the *Act*. The landlord is also at liberty to issue a new 10 Day Notice if rent remains owing for this tenancy.

As the landlord has been unsuccessful in his application, I dismiss his application to recover his filing fee from the tenant without leave to reapply.

Conclusion

I dismiss the landlord's application for an Order of Possession based on the 10 Day Notice, with leave to reapply. This tenancy continues.

I dismiss the landlord's application for a monetary Order with leave to reapply.

I dismiss the landlord's application to recover the filing fee 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: October 21, 2013

Residential Tenancy Branch

