



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

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; and
- a monetary order for unpaid rent pursuant to section 67.

The tenant did not attend this hearing, although I waited until 2:00 p.m. in order to enable him to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

Preliminary Issues - Service of Documents

The landlord testified that he handed the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) to the tenant on September 9, 2013. He entered into written evidence a witnessed Proof of Service document attesting to his hand delivery of the 10 Day Notice to the tenant on September 9, 2013. I am satisfied that the landlord served the 10 Day Notice to the tenant in accordance with the *Act*.

The landlord testified that he handed the tenant a copy of his dispute resolution hearing package. However, over the course of this half hour hearing, the landlord provided four different dates when this occurred. Initially, he gave sworn testimony that this happened on September 9, 2013, the same date as he served the 10 Day Notice. He then corrected what he described as a mistake on his part and said that he handed the tenant the hearing package on September 18, 2013, the date he signed his application for dispute resolution. Next, he testified that he handed the tenant the hearing package on September 20, 2013, the date when the Residential Tenancy Branch (the RTB) received his application for dispute resolution. When I noted that this too could not have happened on that date as the RTB did not create the Notice of a Dispute Resolution Hearing until September 24, 2013, he changed his sworn testimony yet again, stating this time that he must have handed the hearing package to the tenant on September 24.

Given the many changes in the landlord's sworn testimony regarding the service of his hearing package to the tenant, I asked the landlord if there were any witnesses to his hand delivery of his hearing package to the tenant. The landlord said that his brother witnessed him hand the hearing package to the tenant one afternoon, shortly before dinner. He provided me with his brother's phone number as it remained possible that the tenant's brother, his witness, would have clear information regarding the details of the landlord's service of this hearing package to the tenant.

I was able to connect the landlord's brother to the teleconference hearing and heard sworn testimony from him. The landlord's brother recalled witnessing the landlord hand the landlord's hearing package to the tenant, but could not remember the date when this occurred.

Based on the frequent changes in the landlord's testimony and the failure of both the landlord and his witness to recall the date when this occurred with any certainty, I advised the landlord of my decision to dismiss his application for dispute resolution with leave to reapply. I dismissed his application as I am not satisfied that he has demonstrated that he has served his application for dispute resolution to the tenant in accordance with one of the ways required under section 89 of the *Act*.

Conclusion

I dismiss the landlord's application for dispute resolution 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: November 01, 2013

Residential Tenancy Branch

