



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 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 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 1:15 p.m. in order to enable her to connect with this teleconference hearing scheduled for 1:00 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

At the commencement of this hearing, the landlord withdrew his application for an Order of Possession because he said that the tenant vacated the rental unit on December 18 or 19, 2013. The landlord said that he now has possession of the rental unit. The landlord's application for an Order of Possession is hereby withdrawn.

Landlord's Service of Documents

The landlord testified that he posted the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door at 10:30 p.m. on December 3, 2013. In accordance with sections 88 and 90 of the *Act*, I am satisfied that the tenant was deemed served with the 10 Day Notice on December 6, 2013, the third day after its posting on her door.

At the hearing, the landlord testified that he sent a copy of his dispute resolution hearing package to the tenant by registered mail. While he said that he had the Canada Post Tracking Number and Customer Receipt, he could not locate it. He asked for some time to call someone and find those documents. I said that I was willing to let him call

someone who could locate that document. However, the landlord also testified that he sent the hearing package to the tenant at the dispute address, an address where he said she was no longer residing at the time.

Analysis – Service of Landlord's Dispute Resolution Hearing Package

Section 89(1) of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution for a monetary Order.

89(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;...*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;...*

In this case, I find that the landlord provided sworn testimony that the tenant was no longer residing at the rental unit when he sent her his dispute resolution hearing package at that rental unit by registered mail. I find that the landlord has not served his hearing package, including notification of his application for dispute resolution and notice of this hearing to the tenant, in accordance with section 89(1) of the *Act*. I dismiss the landlord's application for a monetary award with leave to reapply.

Conclusion

The landlord's application for an Order of Possession is withdrawn.

I dismiss the landlord's application for a monetary Order 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: January 13, 2014

Residential Tenancy Branch

