



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

CORRECTED DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This telephone conference call hearing was convened as the result of the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for an order of possession for the rental unit due to unpaid rent, a monetary order for money owed or compensation for damage or loss and unpaid rent, and for recovery of the filing fee paid for this application.

The **original** hearing began at 10:30 a.m. as scheduled and the telephone system remained open and was monitored for 10 minutes. During this time, neither the applicant/landlord nor the respondent/tenant dialed into the telephone conference call hearing. **Later, through phone records, it was discovered that the landlord did call into the hearing, but due to a technical difficulties, was unable to connect to the hearing. The hearing was therefore rescheduled on the landlord's original application.**

The rescheduled hearing began 3:00 p.m. on March 4, 2015; the landlord attended and the tenant did not appear. In response to my question, the landlord stated that he served his application for dispute resolution and notice of the hearing held on February 12, 2015, via registered mail on January 28, 2015.

Section 90 of the Act states that documents served in this manner are deemed delivered 5 days later. Thus the application and notice of hearing package was deemed to have been served on February 2, 2015.

I will address my findings on the service of the landlord's application and notice of hearing later in this Decision.

The landlord was provided the opportunity to present his evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary Issue The landlord stated that he believed the tenant vacated the rental unit on January 30, 2014. I note that the landlord resides in the upper level of the residential property, and the rental unit is located on the lower level.

I therefore amended his application to exclude a request for an order of possession due to unpaid rent and the hearing proceeded on the landlord's monetary claim.

Analysis and Conclusion

~~In the absence of the landlord to present his claim, pursuant to section 10.1 of the Dispute Resolution Rules of Procedure (Rules), I dismiss the landlord's application, with leave to reapply.~~

~~Leave to reapply is not an extension of any applicable limitation period.~~

Issue(s) to be Decided

Is the landlord entitled to a monetary order and to recover the filing fee?

Background and Evidence

The landlord submitted that the tenancy began on September 1, 2013, monthly rent was \$1450.00 and that the tenant did not pay a security deposit.

The landlord's monetary claim listed in his application was \$2900.00 for unpaid rent; however, the landlord did not provide details as to the months for which the alleged unpaid rent pertained. Through his evidence, the landlord attempted to change his monetary claim to \$1718.84 for unpaid rent for January of \$1450.00, the filing fee paid for this application for \$50.00, carpet cleaning of \$207.85, and postage costs of \$10.99.

The landlord gave evidence that on January 19, 2015, the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by posting it on the tenant's door, listing unpaid rent of \$1450.00 as of January 1, 2015. The effective vacancy date listed on the Notice was January 29, 2015. Section 90 of the Act states that documents served by posting on the door are deemed delivered 3 days later. Thus the tenant was deemed to have received the Notice on January 22, 2015, and the effective move out date is automatically changed to February 1, 2015.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within 5 days. The Notice also explained the tenant had 5 days to dispute the Notice.

The landlord submitted that the tenant did not pay the January rent prior to vacating, and that she additionally failed to have the carpet cleaned, for which she should be responsible.

I have no evidence before me that the tenant applied to dispute the Notice.

Analysis

Section 89(1) of the Act requires that an application for dispute resolution be served upon the respondent (the tenant in this case) by leaving it with the person, by sending a copy by registered mail to the address at which the person resides or if a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant.

In the case before me, the landlord served his application for dispute resolution and notice of hearing to the tenant via registered mail on January 28, 2015 and the tenant would be deemed to have been served on February 2, 2015, had the tenant still been in possession of the rental unit.

As the landlord provided evidence that the rental unit was vacant on January 30, 2015, I therefore, on a balance of probabilities and insufficient evidence by the landlord, cannot conclude that the tenant was served with the notice of hearing and application for dispute resolution as required by Section 89(1) of the Act.

I therefore dismiss the landlord's application, with leave to reapply.

Leave to reapply does not extend any applicable time limitation deadlines.

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: February 16, 2015

Corrected on March 6, 2015

Residential Tenancy Branch

