



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with a landlord's application for an order of possession and a monetary order for unpaid rent. The landlord attended the hearing but the tenants did not

The landlord initially made this application by Direct Request Proceeding. Under this proceeding the decision in a matter such as this, is made pursuant to section 55(4) of the *Residential Tenancy Act*, without a participatory hearing. The decision is based on an undisputed 10 day Notice to End Tenancy and the written submissions of the Landlord.

In a decision dated October 27, 2017, the Arbitrator found deficiencies that raised questions that could only be answered by addressing these issues through a participatory hearing. Accordingly the landlord's application by direct request was convened to a participatory hearing.

The interim decision included the following instructions:

Notices of Reconvened Hearing are enclosed with this interim decision. The applicant must serve the Notice of Reconvened Hearing, the interim decision, and all other required documents, upon each of the tenants within three (3) days of receiving this decision in accordance with section 89 of the Act.

At the start of the hearing, the landlord informed me that the tenants had moved out on October 30, 2017 and had provided him with a forwarding address. The landlord also added that he found out that the forwarding address provided by the tenant was a fake address and therefore he did not serve the tenant with the notice of today's hearing.

Since the tenant has moved out the landlord does not require an order of possession.

Issue to be Decided

Was the tenant served with the notice of hearing pursuant to Section 88 of the *Residential Tenancy Act*? If so, is the landlord entitled to his monetary claim?

Analysis

Section 88 of the *Residential Tenancy Act* addresses how to give or serve documents. The purpose of serving a notice of hearing under the Legislation is to notify the person being served of matters relating to arbitration. The tenant is entitled to have an opportunity to be heard at the hearing. Based on the testimony of the landlord, I find that the tenants were not served with the notice of hearing and therefore were not given an opportunity to respond to the landlord's claim against them. Accordingly, I must dismiss the landlord's application with leave to reapply.

Since the landlord was forced to make this application when the tenant did not move out or pay rent within the legislated time frame, I award the landlord the recovery of the filing fee. The landlord may retain \$100.00 from the security deposit towards the recovery of the filing fee.

Conclusion

The landlord's application is dismissed with leave to reapply.

The landlord may retain \$100.00 from the security deposit.

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 12, 2018

Residential Tenancy Branch