

DECISION

Dispute Codes OPR MNR MNSD MNDC FF
 CNR MT

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed on December 29, 2009 by the Landlord and on December 9, 2009 by the Tenant.

The Landlord filed seeking to obtain an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, to keep the security deposit, for money owed or compensation for damage or loss under the Act, and to recover the cost of the filing fee from the Tenant for the cost of this application.

The Tenant filed to cancel a notice to end tenancy for unpaid rent and for more time to make her application.

Preliminary Issues

Landlord's Application

The Landlord testified that the Tenant vacated the rental unit prior to the Landlord picking up the hearing package so the Landlord was not able to personally serve the Tenant so he taped it to the door of the rental unit.

The Landlord advised that he has regained possession of the rental unit and wishes to withdraw his application for an Order of Possession and proceed with his request for a Monetary Order.

Tenant's Application

The Tenant did not appear at the scheduled hearing despite being an applicant and a respondent.

Analysis

Landlord's Application

The Landlord provided evidence that the hearing package was taped to the door of the rental unit after the Tenant vacated the unit. The Landlord testified that he did not have a forwarding address for the Tenant and could not serve her with notice of his application for dispute resolution in accordance with the Act.

I find that service of the Notice of Dispute Resolution was not effected in accordance with Section 89 of the *Residential Tenancy Act* which states that service of Notice of Dispute Resolution for a monetary order, must be served either in person to the Tenant or if sent via registered mail, must be sent to the address at which the person resides.

To find in favour of an application for a monetary claim, I must be satisfied that the rights of all parties have been upheld by ensuring the parties have been given proper notice to be able to defend their rights. As I have found the service of documents not to have been effected in accordance with the Act, I dismiss the Landlord's claim, with leave to reapply.

As the Landlord has not been successful with his application, I find that he is not entitled to recover the cost of the filing fee from the Tenant.

Tenant's Application

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing. In the absence of the applicant Tenant, the telephone line remained open while the phone system was monitored for ten minutes and no one on behalf of the applicant Tenant called into the hearing during this time. Based on the aforementioned I find that the Tenant has failed to present the merits of her application and the application is dismissed, without leave to reapply.

Conclusion

I HEREBY DISMISS the Landlord's claim, with leave to reapply.

I HEREBY DISMISS the Tenant's application, 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: January 11, 2010.

Dispute Resolution Officer