

## **DECISION**

Dispute Codes      OPB, MNR, MNDC, MNSD, FF, O

This is an application filed by the Landlord for an order of possession because the Tenant breached an agreement with the Landlord, a monetary order request for unpaid rent, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep all or part of the security deposit and recovery of the filing fee.

The Landlord attended the hearing by conference call and gave testimony. The Tenant did not attend.

The Landlord clarified at the beginning of the hearing that an order of possession is not required as possession was returned to the Landlord. The Landlord states that there is no unpaid rent, but that he is seeking compensation for lost rental income for the month of September.

The Landlord's application was filed on December 6, 2011. The Landlord states that the Tenant was sent the notice of hearing package by registered mail on December 12, 2011. The Tenant did not attend the hearing.

Section 59 of the Act speaks to **Starting proceedings**, and provides in part as follows:

59(3) Except for an application referred to in subsection (6), a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.

As to service of documents, section 89 of the Act speaks to **Special rules for certain documents**, and provides in part as follows:

89(1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, 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;
- (e) As ordered by the director under section 71(1) [director's orders: delivery and service of documents].

Based on the documentary evidence and the undisputed testimony of the Landlord, I find that the Landlord did not provide the Tenant with a copy of their application for dispute resolution within 3 days of making it. The Landlord's application was sent 6 days later. I also find with such a rapid application to hearing time turn around that the Tenant was not able to respond to the notice and attend the hearing.

The Landlord's application is dismissed 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: December 21, 2011.

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Residential Tenancy Branch