



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNDC, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that the Application for Dispute Resolution, the Notice of Hearing, and documents that the Landlord wished to rely upon as evidence were sent to the Tenant at the rental unit, via registered mail, on November 20, 2012. The Agent for the Landlord cited a Canada Post tracking number that corroborates this statement.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent and late fees; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 55, 67, and 72 of the *Residential Tenancy Act (Act)*?

Background and Evidence

The Landlord submitted a Proof of Service of the Ten Day Notice to End Tenancy, in which an Agent for the Landlord declared that a Ten Day Notice to End Tenancy for Unpaid Rent, was posted at the rental unit on October 29, 2012. The Notice declared that the Tenant must vacate the rental unit by November 10, 2012.

The Agent for the Landlord stated that an agent for the Landlord went to the rental unit last week and determined that the rental unit had been vacated. He stated that he does not know if anyone went to the rental unit between October 29, 2012 and last week and he does not know if the Tenant was living at the rental unit on November 20, 2012.

Analysis

The purpose of serving the Application for Dispute Resolution and the Notice of Hearing to a tenant is to notify them that a dispute resolution proceeding has been initiated and to give them the opportunity to respond to the claims being made by the landlord.

Section 89(1)(c) and 89(2)(b) of the *Act* stipulates, in part, that a landlord may serve a tenant with an Application for Dispute Resolution by sending a copy by registered mail to the address at which the person resides. I find that the Landlord has submitted insufficient evidence to establish that the Tenant was still living at the rental unit when the Application for Dispute Resolution and Notice of Hearing were mailed to the Tenant. As the Tenant was served with a Notice to End Tenancy that required him to vacate by November 10, 2012, I find it entirely possible that the Tenant had vacated the rental unit prior to November 20, 2012.

Conclusion

As the Landlord has failed to establish that the Tenant was served with the Application for Dispute Resolution and the Notice of Hearing, I find that I am unable to proceed with the hearing in the absence of the Tenant. The Application for Dispute Resolution 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 18, 2012.

Residential Tenancy Branch