



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD FF
 CNR O

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed on March 19, 2013, seeking an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or utilities; to keep the security deposit; and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed on March 14, 2013, seeking an Order to cancel the notice to end tenancy for unpaid rent and for other reasons.

The Landlord affirmed that the Tenant was served copies of the application for dispute resolution and notice of hearing documents by registered mail on March 25, 2013. Canada Post tracking information was provided in the Landlord's testimony.

Despite this hearing being convened to hear matters pertaining to the Tenant's application; no one appeared at the hearing on behalf of the Tenant.

Issue(s) to be Decided

1. Has the Landlord proven service of the hearing documents in accordance with section 89 of the Act?
2. If not, should the Landlord's application be dismissed with or without leave to reapply?
3. Should the Tenant's application be dismissed with or without leave to reapply?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: the tenancy agreement; the move in condition inspection report form; text messages; and her written statement.

The Tenant submitted documentary evidence which included, among other things, copies of: the 10 Day Notice to end tenancy issued March 10, 2013.

The Landlord testified that she lives on the main floor of the house and the rental unit is located in the basement. She said that on March 21, 2013 she saw the Tenant moving out. On March 23, 2013, she noticed that there were still some of the Tenant's possessions left inside the unit and through text messaging with the Tenant she confirmed he had moved out. The Tenant had indicated in his text message that he would return to pick up a few possessions but he never did. The Landlord confirmed she re-gained possession of the unit as of March 23, 2013.

The Landlord affirmed that the Tenant was served copies of the application for dispute resolution and notice of hearing documents by registered mail on March 25, 2013, four days after she saw him move out and two days after she confirmed through text messaging with the Tenant that she had regained possession.

Analysis

Landlord's Application

I accept that the Landlord has regained possession of the unit as of March 23, 2013.

Section 89 of the Act provides that if documents are being served via registered mail they must be sent to the address where the Tenant resides.

In this case, because the evidence supports the Landlord served the hearing documents several days after the Tenant vacated the rental unit I find that service has not been effected in accordance with the Act. Accordingly the Landlord's application for a Monetary Order is dismissed, with leave to reapply.

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.

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of any submissions from the applicant Tenant I order the application dismissed without liberty to reapply.

Conclusion

The Landlord's application is HEREBY DISMISSED, with leave to reapply.

The Tenant's application is HEREBY DISMISSED, 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: April 15, 2013

Residential Tenancy Branch

