

DECISION

Dispute Codes OPR OPB MND MNR MNSD FF O

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession, and a Monetary Order for damage to the unit, for unpaid rent, to keep all or part of the security deposit, to recover the filing fee and other.

The landlord appeared gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

The issues to be decided based on the testimony and the evidence are:

- Whether the landlord is entitled to an Order of Possession under Section 55 of the *Act* for cause
- Whether the landlord is entitled to a Monetary Order under section 67 of the *Act* for unpaid rent, for damage to the unit, and to recover the filing fee

Background and Evidence

Through the translator, the landlord testified that he did not know if the two names listed on the application for dispute resolution were for the same person or not. One is considered a proper legal name while the other can be considered a nickname, yet the landlord stated that they call the tenant's wife by the male nickname listed on the application.

The landlord testified that there was a written tenancy agreement but that he did not have a copy of it in front of him and could not state the name of the tenant as listed on the tenancy agreement.

The landlord testified that the 10 Day Notice to End Tenancy was served to the tenant February 5, 2009, by giving it to the male tenant in person at approximately 10:00 p.m.

When asked when and how the notice of dispute resolution was served on the tenant the landlord testified that it was March 25, 2009, and then stated it was March 22, 2009, and then advised that it was March 18, 2009.

The landlord could not advise when the tenancy began and stated that he did not have a copy of the tenancy agreement with him. He requested to end the hearing and call back later this afternoon.

Analysis

I find that in order to justify an Order of Possession under section 55 of the *Residential Tenancy Act*, the applicant landlord would be required to prove who the tenant is before he can request an Order of Possession. I dismiss the landlord's request for an Order of Possession with leave to reapply.

The landlord could not provide a definitive date on when the tenant(s) was served the notice of dispute resolution. Based on the foregoing, I find that service was not effected according to section 89 (1) of the *Residential Tenancy Act*. 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 monetary claim with leave to reapply.

I find that in order to justify payment of damages under sections 38 and 67 of the *Act*, the Applicant landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the Applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for loss or to rectify the damage
4. Proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the landlord.

Conclusion

I HEREBY DISMISS the landlord's application for an Order of Possession and for a Monetary Order 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: April 23, 2009.

Dispute Resolution Officer