



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's request for an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, damage or loss under the Act, regulations or tenancy agreement, and recovery of the filing fee. The respondent did not appear at the hearing. The landlord testified that he served the respondent with notification of today's hearing in person on May 10, 2009 at 7:00 p.m. in the presence of the landlord's wife. Initially, I was satisfied that the landlord adequately served the tenant in accordance with the requirements of the Act and I proceeded to hear from the landlord without the respondent present.

As a preliminary issue, I was not satisfied that a tenancy relationship had been formed with the respondent and the respondent is referred to as the respondent and not the tenant throughout the remainder of this decision.

Issues(s) to be Decided

1. Has the landlord established a tenancy relationship with the respondent?
2. Has the landlord established an entitlement to an Order of Possession?
3. Has the landlord established an entitlement to a Monetary Order?
4. Award of the filing fee.

Background and Evidence

The landlord made the following statements during the hearing. The landlord and the respondent's brother had entered into a tenancy relationship. The brother requested permission for the respondent to move in the rental unit with the brother and the

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landlord consented. The respondent moved in with his brother and at some point the brother moved out while the respondent remained.

The landlord testified that the respondent owed him \$4,400 in rent and according to the Landlord's Application for Dispute Resolution the total of \$4,400 is comprised of the following amounts:

Oct 2008 rent	\$ 800.00
Dec 2008 rent	1,200.00
Feb 2009 rent	600.00
March 2009 rent	1,200.00
April 2009 rent	<u>600.00</u>
Total claim	\$ 4,400.00

The landlord was asked when the respondent moved in and the landlord testified and confirmed on three occasions during the hearing that it was December 2008. The landlord was asked when the brother moved out and the landlord testified March 2008. When the landlord was to explain why he had previously testified the brother's lived together when it was clear there was a gap in the months between tenancies, the landlord changed his testimony so frequently I had no certainty as to when, or if, a tenancy began with the respondent. I also queried why the landlord was charging the respondent rent for October 2008 when he had testified the respondent did not move in until December 2008. The landlord's response was not comprehensible. The landlord was asked if he could have someone help him with the testimony but he did not appear to have someone with him to assist.



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The landlord testified there was no written tenancy agreement. The only documentary evidence provided with a 10 Day Notice to End Tenancy allegedly served upon the tenant April 29, 2009. The Notice indicates rent of \$3,800.00 in rent was owed as of April 29, 2009.

Analysis

Given the frequently changing testimony of the landlord I was not able to determine when, or if, a tenancy relationship formed between the landlord and the respondent. Nor was I provided with a detailed description of the partial payments made to the landlord, why whom and when. Nor was a reconciliation made between the request for \$4,400 and the \$3,800 that appears as outstanding rent on the 10 Day Notice.

Given the inconsistent testimony I heard, I did not find the landlord's testimony sufficiently credible to find service of the hearing documents or the 10 Day Notice to End Tenancy. Nor did I find consistent or reliable evidence to determine the amount owed by the respondent, if any. It is important to note that parties to a dispute resolution must provide sufficient evidence to substantiate their claims for the hearing. I found the landlord's documentary evidence lacking. I also found the landlord's testimony so conflicting and inconsistent that it could not be relied upon as credible evidence.

In light of the above, I dismissed the landlord's requests without leave to reapply.

Conclusion

The landlords' application is dismissed in its entirety without leave to reapply.



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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: June 10, 2009.

Dispute Resolution Officer