



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, loss of rent, and recovery of the filing fee. The tenant did not appear at the hearing. The landlord testified that he personally served the tenant with the hearing package on May 25, 2009 at the rental unit. Having been satisfied that the landlord adequately served the tenant in accordance with the requirements of the Act, the hearing proceeded without the tenant present.

Issues(s) to be Decided

1. Whether the landlord has established an entitlement to an Order of Possession for unpaid rent?
2. Whether the landlord has established an entitlement to a monetary award for unpaid rent and loss of rent.
3. Award of the filing fee.

Background and Evidence

The landlord provided testimony that the tenancy commenced in August 2007. The landlord initially stated the rent was \$780.00 per month and then indicated that at the commencement of the tenancy it was \$760.00 per month but was increased to reflect additional cable provided to the tenant. The landlord testified that rent is payable on the 1st day of the month. The landlord was initially very uncertain as to the amount of the security deposit. After further questioning the landlord stated the security deposit was \$380.00 and paid on August 15, 2007.

The landlord was asked if there was a written tenancy agreement to which he replied there was and that he was reading from it during the hearing. The landlord was asked what page the security deposit provision was located on in the tenancy agreement but the landlord could not answer that question. The landlord was asked if he had a fax machine in order for me to verify the contents of the tenancy agreement but the landlord stated he did not have a fax machine.

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The only documentation the landlord provided as evidence for the was a copy of a 10 Day Notice to End Tenancy dated April 28, 2009 stating that the tenant failed to pay rent of \$1,280.00 on April 28, 2009. On the landlord's application for dispute resolution, the landlord indicated he was seeking a Monetary Order for \$1,260.00.

The landlord was asked why he did not provide a copy of the tenancy agreement or the other Notices to End Tenancy he claimed to have served upon the tenant. The landlord replied that he did not know he had to submit such evidence before the hearing. Upon enquiry the landlord confirmed that he had received and read the fact sheet 114: *The Dispute Resolution Process*.

Analysis

The person who applies for dispute resolution is responsible for proving their claim. The evidence must be submitted to the Residential Tenancy Branch and served upon the other party at least five business days before the hearing and the evidence should be organized, relevant to the claim and convincing. Where a landlord is trying to obtain an Order of Possession important, relevant documents include the tenancy agreement, Notice to End Tenancy, proof of service, and any other documents to show the tenant has failed to pay rent as required under the terms of the tenancy agreement.

The above information is included in Fact Sheet RTB- 127: *Preparing for Dispute Resolution* which is referenced in fact sheet 114.

In general, I found the landlord's documentary and oral evidence to be lacking, inconsistent and unclear. The landlord did not provide a reconciliation for the amount of monthly rent (\$780.00) and the amount of outstanding rent that appears on the 10 Day Notice (\$1,280.00) or the amount that appears on the landlord's application (\$1,260.00). In other words, how did the tenant come to owe \$1,260.00 or \$1,280.00 on April 28, 2009 when the landlord testified earlier that rent of \$780.00 was payable on the 1st of every month? Finally, I found the landlord's uncertain and changing responses to my enquiries during the hearing, coupled with the fact the landlord did not provide a copy of the written tenancy agreement he alleged to have in his possession, not convincing enough to warrant the issuance of an Order of Possession and Monetary Order against the tenant.

In light of the above findings, the landlord's application was dismissed with leave to reapply. I make no award for recovery of the filing fee.



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Conclusion

The landlord's application was 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: June 25, 2009.

Dispute Resolution Officer