



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNR

OPR

MNSD

FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for rent owed based on a Notice to End Tenancy for Unpaid Rent and an order to retain the security deposit in partial satisfaction of the claim.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on July 31, 2009 and signed for by the tenant on August 5, 2009, the tenant did not appear.

Issue(s) to be Decided

The issue to be determined, based on the testimony and evidence, is whether or not the landlord is entitled to monetary compensation for rental arrears owed.

Background and Evidence

The landlord testified that the respondent and the landlord had entered into a tenancy agreement. No copy of the tenancy agreement was submitted into evidence. The landlord testified that a Ten-Day Notice to End Tenancy for Unpaid Rent was served on the tenant on July 16, 2009. No copy of this Notice

was submitted into evidence. The landlord testified that the tenant was in rental arrears in the total amount of \$1,598.89 as of July 31, 2009. The landlord testified that the tenant vacated the unit on July 31, 2009, leaving a written forwarding address.

The landlord is seeking a monetary order based on the Ten-Day Notice served on the tenant.

Analysis

Preliminary Matters

No Evidence Submitted

An application for a Monetary Order for rent owed is based entirely upon the issuance and service of a Ten-Day Notice to End Tenancy for Unpaid Rent. The burden of proof is on the landlord to establish that such a Notice was issued and served on the tenant and thus it is vital that a copy of the notice upon which the landlord intends to rely to support the order has been submitted into evidence for the purpose of these dispute resolution proceedings.

In this instance, the landlord has neglected to submit into evidence a copy of the Ten-Day Notice to end Tenancy for Unpaid Rent that was allegedly served on the tenant on July 16, 2009. I find that verbal testimony as to the existence and content of the notice will not suffice to meet the applicant's burden of proof to support a determination to award a monetary order based on the Notice. I find that if the documents exist and were issued and served on the respondent, they should then be before me. This is necessary in order that a fair determination can be made prior to granting a monetary order against the respondent.

While I accept the landlord's testimony and evidence that the Notice of Hearing was served on the tenant, I do not agree with the landlord's argument that the respondent's awareness of the hearing and failure to appear to dispute the claim functions to authenticate the landlord's claim in the absence of legitimate evidence which the landlord neglected to provide.

Submission of Late Evidence

In regards to the landlord's request to submit the missing evidence after the hearing, it is not possible to accept evidence after the hearing has concluded.

I find that the Residential Tenancy Rules of Procedure, Rule 3.1, states that all evidence must be served on the respondent and Rule 3.4 requires that, to the extent possible, the applicant must file copies of all available documents, or other evidence at the same time as the application is filed, or if that is not possible, at least (5) days before the dispute resolution proceeding. If copies of the applicant's evidence are not received by the Residential Tenancy Branch or served on the respondent prior to the hearing as required, the Dispute Resolution Officer must apply Rule 11.6 which deals with the consideration of evidence not provided to the other party or the Residential Tenancy Branch in advance. This rule permits the Dispute Resolution Officer to adjourn a dispute resolution proceeding in cases where the party claims that the missing evidence was submitted *to the Residential Tenancy Branch but was not received by the Dispute Resolution Officer before the dispute resolution proceeding*. However, in this instance the evidence in question was never submitted to the branch.

It appears that the applicant was asking to be given more time to submit additional evidence to prove the monetary claim. In such circumstances, The Rules of Procedure, Rule 6.1, specifies what factors must be considered in allowing an adjournment for the purpose of receiving additional evidence from one, or both, parties. One of the factors to be weighed is the degree to which the need for the adjournment arises out of the actions or neglect of the party seeking the adjournment. In this instance, the hearing was on the landlord's application and the landlord did not submit relevant documents that were under the control of the applicant. I found that there insufficient support to prove that that the applicant did not have a fair opportunity to make evidentiary submissions.

In any case, before one party requests an adjournment it is necessary to attempt to get the consent the other party first. Moreover, any evidence accepted for the purpose of an adjournment also must be served on the other party.

Given the above I found that delaying the hearing further, particularly for the purpose of allowing the applicant a second opportunity to submit evidence that could have been served on the other party and placed into evidence in advance of the hearing, would be prejudicial to the respondent and contrary to natural justice. I found that there was not adequate justification under the Act and Rules of Procedure to support an adjournment and to allow the landlord to submit additional evidence.

Conclusion

Given the above, I find that the landlord's application can not succeed based on the evidence provided and I hereby dismiss the application without leave to reapply.

September 2009

Date of Decision

Dispute Resolution Officer