



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

OPR, MNR, FE, O

Introduction

This Dispute Resolution hearing was convened to deal with an application by the landlord for an Order of Possession based on a Ten-Day Notice to End Tenancy for Unpaid Rent issued on August 21, 2009 and a monetary order for rent owed.

The landlord testified that the tenant was served with the Application for Dispute Resolution and Notice of Hearing in person on September 22, 2009, the tenant did not appear.

At the outset of the hearing, the landlord advised that the tenant had moved out, so the Order of Possession was no longer necessary. However, the landlord was still seeking a monetary order for rent owed and also wanted to add an additional monetary claim for damages caused to the unit.

Issue(s) to be Decided

The landlord was seeking a monetary order claiming \$1,100.00

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

- Whether the landlord is entitled to an Order of Possession based on the Ten-Day Notice to End Tenancy issued under section 46
- Whether the landlord has proven that the landlord is entitled to monetary compensation under section 67 for rental arrears owed and damages.

Background and Evidence

No tenancy agreement was placed in evidence. However, the landlord testified that the tenancy began in May 2009 with rent set at \$750.00 and a security deposit of \$350.00. The landlord testified that during the tenancy, the tenant disturbed other residents, allowed too many people to occupy the unit and did not pay the rent on time. The landlord testified that the tenant did not pay rent owed and therefore the landlord was seeking to end the tenancy. The landlord submitted a form upon which the tenant had purported to be giving Notice to End the Tenancy effective October 1, 2009, but did not leave until the end of October and had given her keys to other individuals who then occupied the unit. The landlord testified that after the tenant vacated it was discovered that substantial damage was done to the unit and the landlord hopes to pursue a monetary order for compensation for the damages in addition to the rent owed.

The landlord submitted into evidence a copy of a letter composed by the landlord titled “10 DAY NOTICE FOR EVICTION” ... “*For Breach of contract between the parties*” dated August 21, 2009 that the landlord testified was served by posting on the tenant’s door.

Analysis

Rental Arrears Owed

Placed into evidence was a copy of a notice from the landlord to the tenant purporting to be a “10-Day Notice for Unpaid Rent”. However, I find that this was not a valid Notice to End Tenancy under the Act. I find that the Notice on file as evidence is not a legal notice in that the form utilized is not an approved form. A Ten-Day Notice to End

Tenancy for Unpaid Rent required to initiate an end to a tenancy and claim for rent owed under section 46 of the Act must consist of two pages with specific detailed information and instructions on the form. The landlord indicated that the tenant was served the communication that the landlord had placed in evidence, which did not contain the mandatory data.

Section 46 of the Act which deals with unpaid rent states that (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice and it goes on to say that, **a notice under this section must comply with section 52 [form and content of notice to end tenancy]**. (my emphasis)

Section 52 (e), below requires any Notice to be in the approved form when given by a landlord and, in order to be effective, a notice to end a tenancy from either party must be in writing and must:

- be signed and dated by the landlord or tenant giving the notice,
- give the address of the rental unit,
- state the effective date of the notice,
- except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- when given by a landlord, be in the approved form. (my emphasis)

The burden of proof is on an Applicant to prove that the Notice to End Tenancy and the reasons supporting the Notice are in compliance with the Act. I find that despite the fact that the reasons for ending the tenancy may be valid, the Notice was fatally flawed and did not comply with sections 46 and 52 of the Act. Therefore, I find that the Landlord's application seeking the rental arrears based on the Notice, cannot proceed.

Based on the testimony of the parties, I find that the tenant was never properly served with a compliant Ten-Day Notice to End Tenancy for Unpaid Rent. I find that the landlord has failed to give sufficient notification to the tenant regarding the rental arrears being claimed in the landlord's application and both of the party's rights and responsibilities in regards to this matter. Therefore, the landlord's claim for rental arrears is dismissed with leave to reapply.

Claim for Monetary Damages

The landlord's application did not contain a specific claim for damages to the rental unit. However, during the hearing the landlord attempted to lodge a claim for damages caused to the unit by the tenant or person permitted on the property by the tenant.

In regards to an Applicant's right to claim damages from the another party, Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results and section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

However, in order to have this matter heard during the hearing, it must be proven that the landlord served the tenant with an amended application containing the new details of the increased claim prior to the hearing on the matter.

While I accept that the landlord's initial application was served to the tenant in person at address where the tenant resided, I note that the amended claim for additional compensation for damages, along with the necessary evidence to support the claim, was never served on the tenant.

Rule 3.1 of the Residential Tenancy Rules of Procedure provides that, together with a copy of the Application for Dispute Resolution, the applicant must serve each respondent with copies of all of the following:

- a) the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch;
- b) the dispute resolution proceeding information package provided by the Residential Tenancy Branch;
- c) the details of any monetary claim being made, and
- d) any other evidence accepted by the Residential Tenancy Branch with the application or that is available to be served.

I find that any revisions to the application, including additional monetary claim for damages would be subject to the above requirements under the Act.

The Residential Tenancy Rules of Procedure, Rule 3.3, demands that, if the respondent does not attend the dispute resolution proceeding, the applicant must prove to the Dispute Resolution Officer that the respondent was served as required under the Act.

I find that the applicant landlord did not meet the burden of proof in regards to the service of the amended claim. Accordingly, the landlord's monetary claim for damages to the rental unit must also be dismissed with leave to reapply.

Conclusion

Based on the testimony and evidence presented during these proceedings, I hereby dismiss the landlord's application in its entirety with leave to reapply.

November 2009

Date of Decision

Dispute Resolution Officer