



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was scheduled to hear the landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and recovery of the filing fee. Both parties appeared at the hearing and were provided the opportunity to be heard. The tenant confirmed receipt of the hearing package and landlord's evidence.

I heard the landlord also submitted late evidence to the Residential Tenancy Branch that was not before me during the hearing; however, upon hearing that it was not served upon the tenant, it is not admissible and I have not considered it.

Issues(s) to be Decided

1. Has the landlord established service of the Notice to End Tenancy upon the tenants?
2. Has the landlord established an entitlement to an Order of Possession?
3. Has the landlord established an entitlement for a Monetary Order?
4. Award of the filing fee.

Background and Evidence

Upon review of the undisputed evidence before me, I make the following findings. The tenancy commenced October 2005. The tenants are required to pay rent of \$331.00 on the 1st day of every month. On September 9, 2009 the landlord issued a *10 Day Notice to End Tenancy for Unpaid Rent* (the Notice) and sent it to the tenants via regular mail. The Notice indicates that \$268.00 in rent was outstanding as of September 1, 2009.

Upon enquiry, the landlord's assistant testified that the amount appearing on the Notice was comprised of the following amounts:

August rent	\$ 331.00
August NSF fee	20.00
June NSF fee	20.00
Partial payment applied	(103.00)
Balance	\$ 268.00

The tenant acknowledged receiving one page of the 10 Day Notice in mid September 2009 but did not pay the outstanding rent or dispute it. The tenant submitted that she had been in arrears and that the landlord was taking extra withdrawals from her bank account to pay down the arrears. The tenant was of the belief the 10 Day Notice related to the arrears that she was paying down.

I noted that the landlord's documentary evidence submitted for this hearing did not include the second page of the 10 Day Notice. Upon enquiry, the tenant stated she did not believe she had received the second page of the 10 Day Notice. The tenant also acknowledged that she had not paid rent for September through November 2009.

Analysis

The purpose of serving documents under the *Act* is to notify the person being served of their breach and notification of their rights under the *Act* in response. Notices to End Tenancy issued by a landlord must be in the approved form. The approved form for unpaid rent is a two page document with the second page outlining the rights and obligations of the tenant with respect to paying the outstanding rent or disputing the Notice. The landlord is seeking to end the tenancy due to a failure to pay rent; however, the landlord has the burden of proving that the tenant was served with both pages of the two page 10 day Notice to End Tenancy.

Based on the evidence before me, I was not sufficiently satisfied the tenant received both pages of the 10 Day Notice; therefore, I do not grant the landlord an Order of Possession or Monetary Order with this application.

As the parties were informed at the hearing, the landlord is at liberty to issue another 10 Day Notice upon the tenants and the tenants must pay the outstanding rent within five days of receiving the Notice in order to nullify the Notice.

After hearing from both parties, I find it would be beneficial and it is highly suggested that the landlord provide the tenants with a statement of rental arrears so that the tenants have a better understanding as to what is in arrears and what amounts have been applied to the arrears.



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Ministry of Housing and Social Development

Conclusion

The landlord's application for an Order of Possession has been dismissed and the monetary component of this application is 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: November 06, 2009.

Dispute Resolution Officer