

DECISION

Dispute Codes OPC OPB MNR MSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for cause and/or breach of an agreement with the Landlord, a Monetary Order for unpaid rent or utilities, to keep all or part of the security and/or pet deposit, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, served personally by the Landlord to the Tenant on April 15, 2010.

The Landlord appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

Is the Landlord entitled to an Order of Possession a) for cause or b) for breach of an agreement with the Landlord pursuant to section 55 of the *Residential Tenancy Act*?

Is the Landlord entitled to a Monetary Order a) for unpaid rent or utilities, to keep all or part of the security and/or pet deposit, pursuant to sections 38 and 67 of the *Residential Tenancy Act*?

Background and Evidence

The Landlord testified that they entered into a verbal, month to month, tenancy agreement with the Tenant “sometime around” July 2009 and that rent is payable in the amount of \$1,050.00 “around” the first of each month. The Landlord stated that a

security deposit of \$500.00 was paid by the Tenant sometime after the onset of the tenancy.

The Landlord stated that the Tenant is still occupying the rental unit as she has possessions in the unit and has not returned the keys, even though a 1 Month Notice to End Tenancy for cause was served to the Tenant by the Landlord's spouse on February 26, 2010. The Landlord confirmed that she did not submit documentary evidence to the Residential Tenancy Branch or to the Tenant in support of her claim.

The Landlord argued that the Tenant has stopped paying rent and that the Tenant made a partial payment towards the February 2010 rent. The Landlord confirmed that she did not know the date the Tenant made the payment and stated that she "believes" the Tenant paid \$1,020.00 towards the February 2010 rent.

Analysis

All of the testimony and documentary evidence was carefully considered.

The Landlord has provided testimony that a 1 Month Notice to End Tenancy was issued to the Tenant however the Landlord has failed to prove that these notices were ever issued, in accordance with section 47 of the Act, as the Landlord failed to provide documentary evidence in support of her testimony.

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. The Landlord is seeking to end the tenancy due to this breach; however, the Landlord has the burden of proving that the Tenant was served with the 1 Month Notice to End Tenancy.

In the absence of documentary evidence that the 1 Month Notice to End Tenancy was issued, and in the absence of accurate testimony about the standard terms of the tenancy agreement, I find that the Landlord has failed to present the merits of her case and I hereby dismiss her application, without leave to reapply.

Having dismissed the Landlord's application, the 1 Month Notice to End Tenancy issued on February 26, 2010, becomes void and is of no force or effect.

Conclusion

I HEREBY DISMISS the Landlord's application, without 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: April 20, 2010.

Dispute Resolution Officer