



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This matter dealt with an application by the Landlords for an Order of Possession, a Monetary Order as well as to recover the filing fee for this proceeding. The Landlord testified that the rental unit has been vacated and there was no need to proceed further for an Order of Possession.

The Landlords and one Tenant appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issues(s) to be Decided

Is the Landlord entitled to an order of possession for the rental unit and to obtain a monetary order?

Background and Evidence

This fixed term tenancy started on February 1, 2010, and was to expire on January 31, 2011. A security deposit in the amount of \$462.50 was paid on January 20, 2010. Although not provided into evidence at the time of the hearing, the Landlord gave affirmed testimony that both Tenants signed and were listed on the Tenancy Agreement.

Although the Landlord supplied evidence and gave affirmed testimony that the 10 Day Notice to End Tenancy was posted on the door of the rental unit on August 3, 2010, the Landlord did not supply into evidence a copy of that Notice.

The Landlord testified that subsequent to the delivery of the 10 Day Notice, he learned that a co-Tenant no longer resided in the rental unit. However the evidence supplied by

the Landlord indicates that the Notice the Application of Dispute Resolution was still sent to that co-Tenant by registered mail to the rental unit on August 25, 2010.

The Landlord also applied to retain the security deposit, but admitted not performing a complete inspection of the premises as of the day of the hearing.

The Tenant testified that she moved out of the rental unit four months ago and did not receive a copy of the 10 Day Notice to End Tenancy. The Tenant confirmed that she did not inform the Landlords of her move at the time.

Analysis

The Landlords have not supplied evidence to the Residential Tenancy Branch or the Tenants as required under the Act.

Section 88 of the Act set out the ways in which a Notice to End Tenancy may be served. Even if I were to find that the co-Tenant received a copy of the 10 Day Notice, I find that the Notice is not enforceable for the following reason.

A Notice to End Tenancy can only be enforced if it complies with the requirements of section 52 of the Act. Without a copy of the Notice to End Tenancy that the Landlords served on the Tenants, I cannot conclude that the Notice is effective and therefore enforceable.

I further find that I cannot ascertain the co-Tenant received a notice of the Landlords' Application for Dispute Resolution, as required to be served in accordance with section 89 of the Act, after sending the certified mail to the rental unit after being informed the co-Tenant no longer resided there. Further Rules of Procedure 3.5 require that documents applicants intend to rely upon as evidence at the dispute resolution proceeding must be received by the Residential Tenancy Branch and served on the Respondent as soon as possible, and at least five days before the dispute resolution proceeding.

The Landlords' application for a monetary order for unpaid rent is dismissed without leave to re-apply for failure to comply with the Act, rules and regulations.

I find the issue of the security deposit premature due to the lack of a complete inspection. Therefore I make no findings as to the disposition of the security deposit and the **Landlords are granted leave to re-apply under section 35 of the Act.**

Conclusion

The Landlords' application for a monetary order for unpaid rent is dismissed without leave to re-apply.

The Landlords are granted leave to re-apply for a determination of the matter of the security deposit.

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: September 14, 2010.

Dispute Resolution Officer