



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, OPR, MNSD, MNDC, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession, a Monetary Order as well as to recover the filing fee for this proceeding.

The Landlord and 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

Both parties gave affirmed testimony that this was originally a fixed term tenancy starting in March, 2010, with other Landlords and renewed on May 16, 2010, effective June 1, 2010, with the current Landlord for a monthly rent of \$850.00. A security deposit in the amount of \$425.00 was paid on March 16, 2010. The Landlord did not supply into evidence either tenancy agreement so the remaining details of the Agreement unclear.

Although the Landlord gave affirmed testimony that he delivered such documents, he did not supply into evidence a copy of the 10 Day Notice to End Tenancy, proof of the service of the Notice or proof of the service of the Notice the Application of Dispute Resolution to the Tenant.

The Landlord gave affirmed testimony that the Tenant had not paid rent for the months of July, August and September and owed the amount of \$2,550.00. The Landlord also requested to retain the security deposit.

In his affirmed testimony, the Tenant confirmed he had not paid the rent as stated above for July, August and September, did not dispute the remaining testimony and further requested that he be allowed to stay in the rental unit and pay the balance within a week. The Landlord did not accept this offer.

Analysis

The Landlord has not supplied evidence to the Residential Tenancy Branch or to the Tenant 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 Tenant received a copy of the 10 Day Notice, I find that the Notice is not enforceable for the following reasons:

A Notice to End Tenancy can only be enforced if it complies with the requirements of section 52 of the Act. Further Rules of Procedure 3.5 require that any document applicant 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.

Without a copy of the Notice to End Tenancy that the Landlord served on the Tenant, I cannot conclude that the Notice is effective and therefore enforceable as to the request for an Order of Possession. Therefore the Landlord's application for an Order of Possession **is dismissed without leave to re-apply** for failure to comply with the Act, rules and regulations.

I find the Landlord is permitted to file another Notice to End Tenancy conforming with the Act, rules and regulations in the event of a future breach by the Tenant.

The Tenant gave affirmed testimony confirming he is in rental arrears in the amount of \$2,550.00 and I therefore find the Landlord has established a total monetary claim of **\$3,000.00** comprised of \$2,550.00 in unpaid rent and the \$50.00 filing fee for the Application.

I order that the Landlord retain the deposit of \$425.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$2,575.00**.

This Order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Landlord's application for an Order of Possession is dismissed without leave to re-apply for failure to comply with the Act, rules and regulations.

I find that the Landlord is entitled to monetary compensation pursuant to section 67 in the amount of **\$2,575.00** for rent owed.

This Order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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 15, 2010.

Dispute Resolution Officer