

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, to keep the security 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 on August 13, 2010, at the rental unit.

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 pursuant to section 55 of the *Residential Tenancy Act*?

Is the Landlord entitled to a Monetary order pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

The month to month tenancy began on October 1, 2009. Rent is payable on the first of each month in the amount of \$770.00 and the Tenant paid a security deposit of \$385.00 on October 1, 2009.

The Landlord testified that the Tenant has accumulated unpaid rent during the months of June, July and August. She confirmed a 10 Day Notice to End Tenancy was served personally to the Tenant, at the rental unit on July 2, 2010.

I questioned the Landlord two additional times to confirm which date the 10 Day Notice was served to this Tenant and each additional time she stated that the Notice was served personally on July 2, 2010. I then asked the Landlord if she had served more

than one 10 Day Notice to this Tenant and she answered “no, only this Notice was given on July 2, 2010”.

Analysis

All of the testimony and documentary evidence was carefully considered.

The Landlord has provided a copy of the 10 Day Notice to End Tenancy which was issued on July 21, 2010, with an effective date of August 5, 2010, for unpaid rent of \$2,170.00 which was due on August 1, 2010. The Landlord testified that this Notice was personally served to the Tenant on July 2, 2010.

I find that the 10 Day Notice issued by the Landlord does not meet the form and content requirements of section 52 Act as the Notice was issued July 21, 2010, ten days prior to when the unpaid rent is due on August 1, 2010. The Landlord provided further contradictory testimony when she advised this Notice was served to the Tenant on July 2, 2010, nineteen days before the Notice was even issued. Based on the aforementioned I find the 10 Day Notice to End Tenancy issued on July 21, 2010 is invalid and I hereby dismiss the Landlord's application without leave to reapply.

As the Landlord has not been successful with her application, I decline to award recovery of the filing fee.

Conclusion

I HEREBY ORDER the 10 Day Notice to End Tenancy issued for Unpaid Rent and dated July 21, 2010, is void and is without force or effect.

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: October 01, 2010.

Dispute Resolution Officer