



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, FF, O

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, to recover the filing fee for this proceeding and for other considerations.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") in person on December 1, 2010. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both the Tenant and the Landlord in attendance.

At the start of the hearing it was brought to the Landlord's attention that the 10 day Notice to End Tenancy was incorrectly completed. The Tenant's last name was not on the form, the Landlord's last name was not on the form, the Tenant's address was incomplete, the effective vacancy date was incorrect and the Landlord did not sign the form.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?

Background and Evidence

This tenancy started on July 1, 2010 as a month to month tenancy. Rent is \$600.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$300.00 on June 25, 2010.

The Landlord said that the Tenants did not pay \$350.00 of rent for August, 2010, \$600.00 of rent for September, 2010, \$600.00 of rent for October, 2010 and \$600.00 of rent for November, 2010 when it was due and as a result, on November 15, 2010 he posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated November 15, 2010, on the door of the Tenants' rental unit. The Landlord continued to say that the Tenant moved out of the rental unit on December 1, 2010.

The Landlord also sought to recover the \$50.00 filing fee for this proceeding.

The Tenant said she did not receive the 10 Day Notice to End Tenancy until November 23, 2010. As well the Tenant said that she paid \$430.00 on July 29, 2010 for rent to the Landlord's wife, \$375.00 of rent to the Landlord's wife on August 26, 2010, \$175.00 was paid to the Landlord by a friend of the Tenant on September 17, 2010, on October 2, 2010 the Tenant said she paid the Landlord's wife an additional \$500.00 for rent and on November 8, 2010 Social Services sent a cheque to the Landlord for \$530.00. The Tenant said she made these payments in cash and the Landlord did not give her a receipt.

Analysis

The 10 Day Notice to End Tenancy dated November 15, 2010 is incorrectly completed. The names are not complete the address is incorrect, the effective vacancy date is wrong and the Landlord did not sign the Notice therefore; I find the Notice to End Tenancy dated November 15, 2010 invalid.

As well there is a considerable amount of contradictory testimony as to the amount of rent paid. The Landlord said there is unpaid rent of \$2,150.00 and the Tenant said she has paid \$2,050.00. Neither the Landlord nor the Tenant provided any corroborating evidence to support their claims. As a result, the burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met. I find the Landlord's application is dismissed with leave to reapply for lack of evidence to establish his claim.

As the Landlord was not successful in this matter I dismiss his claim to recover the filing fee for this proceeding of \$50.00 from the Tenant.



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Conclusion

The Landlord's 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*.
