



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This matter dealt with an application by the Landlords for an Order of Possession and a Monetary Order for unpaid rent, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

The Landlords said they served the Tenant with the Application and Notice of Hearing (the "hearing package") by posting it to the rental unit door on March 8, 2011. Section 89(2) of the Act says that an application for an Order of Possession may be posted on the door of a tenant's residence however s. 89(1) of the Act says that an application for a Monetary Order must be served either in person or by registered mail. Consequently, I find that the Tenant has not been properly served with the Landlords' application for a Monetary Order and that part of their application is dismissed with leave to reapply.

Issue(s) to be Decided

1. Do the Landlords have grounds to end the tenancy?

Background and Evidence

This tenancy started on July 1, 2006. Under the terms of the Parties' tenancy agreement rent is \$850.00 per month. The Landlords said rent was increased to \$900 per month approximately one year ago. The Tenant paid a security deposit of \$425.00 at the beginning of the tenancy.

The Landlords said that the Tenant did not pay rent for March 2011 when it was due and as a result, on March 2, 2011, the Landlords served the Tenant in person with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 2, 2011. The Landlords said the Tenant has still not paid rent for March 2011. The Landlords also claim that they were advised by social services in early March 2011 that the Tenant had discontinued having her shelter allowance paid to them because she had found a new residence.

The Tenant claimed that she met with one of the Landlords (J.D.), an agent of a property management firm and agents of a restoration company on February 9, 2011. The Tenant said she told the Landlord at that time that she would have to move out for

health reasons because the rental property was full of mould. The Tenant said she thought she had an agreement with the Landlord that she could move out on March 15, 2011 without having to pay rent. The Landlord said he never told the Tenant she did not have to give him written notice she was ending the tenancy or that she did not have to pay rent for March 2011. The Tenant said she moved out on March 14, 2011 and advised the Landlords on March 15, 2011.

Analysis

The Tenant claimed that the Landlords knew she would be moving out and agreed she did not have to pay rent because she had to move for health reasons. The Tenant admitted that she did not give the Landlords written notice that she was ending the tenancy and she did not advise them that she had moved out until March 15, 2011. The Landlords deny that the Tenant told them in February 2011 that she would be moving out in March and claim instead that she led them to believe at the end of February 2011 that she would be paying rent for March 2011. Notwithstanding these findings of fact, I make no finding as to the Landlords' entitlement to rent for March 2011 as for the reasons set out above, that part of their application has been dismissed with leave to reapply.

I find that the tenancy ended on March 15, 2011 when the Tenant advised the Landlords that she had moved out. Consequently, I find that an Order of Possession is unnecessary to end the tenancy and that part of the Landlords' application is dismissed without leave to reapply.

Conclusion

The Landlords' application for an Order of Possession and to recover the filing fee for this proceeding is dismissed without leave to reapply. The Landlords' application for unpaid rent and to keep the Tenant's security deposit 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*.

Dated: March 22, 2011.

Residential Tenancy Branch