



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was scheduled to deal with the landlord's application for an Order of Possession and Monetary Order for unpaid rent. The tenant did not appear at the hearing. The landlord's agent testified that the hearing documents were served to the tenant's girlfriend who lives with the tenant at the rental site.

The Act permits a landlord to serve an application upon an adult who apparently resides with the tenant for purposes of obtaining an Order of Possession and I proceeded to consider the landlord's application for an Order of Possession.

The Act provides that a landlord must serve a tenant in person or by registered mail with respect to an application for monetary compensation. The landlord did not sufficiently serve the tenant for purposes of the monetary claim and I dismissed that portion of the landlord's claim with leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

The landlord testified that the tenant is required to pay rent of \$506.44 on the 1st day of every month. On February 16, 2011 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent on the tenant's door. The landlord testified the tenant has paid rent for April 2011 but still owes for January and March 2011, plus late fees. The landlord testified there is no written tenancy agreement but only park rules.

Provided as documentary evidence was a copy of page-one of a 10 Day Notice to End Tenancy dated February 16, 2011 which indicates rent for January and March 2011 was outstanding in the total amount of \$1,062.88.

Analysis

In order to establish an entitlement to an Order of Possession for unpaid rent I must be satisfied that the landlord served a valid and enforceable 10 Day Notice to End Tenancy for Unpaid Rent.

The Notice provided to me is dated and was posted on the tenant's door on February 16, 2011 yet the amount indicated on the Notice includes rent for March 2011 which was not outstanding at that time. Further, the landlord appears to be charging late fees when the landlord does not have the legal authority to do so without a written tenancy agreement showing such an agreement to pay late fees.

Finally, I was provided with only the first page of the 10 Notice to End Tenancy when there are two pages to the Notice that must be served upon the tenant and provided to the Residential Tenancy Branch as evidence for a request for an Order of Possession.

Based on the above findings, I concluded that the 10 Day Notice to End Tenancy presented to me is not valid or not enforceable. Therefore, I deny the landlord's request for an Order of Possession.

The landlord is at liberty to determine the amount of rent the tenant currently owes, excluding any illegal late fees, and serve both pages of a 10 Day Notice to End Tenancy to the tenant. The tenant will then have five days to pay the outstanding rent or dispute the Notice.

Conclusion

The landlord's application for monetary compensation was dismissed with leave to reapply. The landlord's application for an Order of Possession was dismissed as I found the 10 Day Notice to End Tenancy to be invalid and unenforceable.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: April 15, 2011.

Residential Tenancy Branch