



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, MNDC, OPR, FF

Introduction

This Application for Dispute Resolution by the landlord indicated that the landlord was seeking an Order of Possession based on a Ten-Day Notice to End Tenancy for Unpaid Rent posted on the door on June 3, 2011 and also seeking a monetary order for rental arrears owed.

Both parties appeared at the hearing and gave evidence.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence is whether the landlord is entitled to monetary compensation under section 67 of the *Act* for rental arrears owed and an Order of Possession.

Background and Evidence

The landlord is seeking a monetary order claiming \$5,800.00 for rent arrears and \$50.00 for the cost of filing this application.

The landlord testified that the tenancy began on November 1, 2010 for a fixed term with rent set at \$2,100.00. No copy of the tenancy agreement was in evidence. The landlord testified that the tenant owed \$1,600.00 May, \$2,100.00 each for June and July 2011, but paid \$500.00 towards the debt. The landlord is seeking an order of possession and a monetary order for the remaining \$5,300.00 owed.

The tenant testified that the rental arrears were paid in full by bank draft.

Preliminary Issue

Although the landlord had included accounting records of the tenant's rent payment history, there was no copy of the Ten Day Notice to End Tenancy for Unpaid Rent on file. The landlord testified that this document was sent by emailed/fax.

The landlord was permitted to fax in proof of prior submission of the evidence. However, the fax cover sheet received to verify documents were sent, indicated that the

landlord had addressed the transmission to a website address instead of to a valid fax number for the Residential Tenancy Branch. Accordingly, I find that the evidence was not submitted to file in time to conduct the hearing and must therefore be disregarded.

Analysis

An Order of Possession and a monetary claim for rent is based on the Ten-Day Notice to End Tenancy, and the burden of proof is on the applicant claiming compensation to prove that the tenancy exists and to supply all of the necessary evidence upon which the landlord intended to rely in accordance with the Act.

I find that the material given to the applicant contained detailed information and instructions. Under the heading, “*GENERAL INFORMATION about your responsibility and the hearing*” the Notice states: “*Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing. Instructions are included in this package. Deadlines are critical.*”

The instructions go on to state that Residential Tenancy Branch Rules of Procedure apply to the proceedings and refers participants to contact the Residential Tenancy Branch and also gives the fax and postal address.

With respect to the landlord’s request for an Order of Possession and monetary claim, I find that the landlord’s failure to provide the evidence 5 days prior to the hearing in accordance with the Act and Rules of Procedure has made it necessary to dismiss the application.

Conclusion

In light of the above, I find that this application cannot proceed under the circumstances and I make no findings on the merit of the application. The landlord’s application is therefore dismissed 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: July 15, 2011.

Residential Tenancy Branch