



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession, a monetary order, to retain the security deposit, and to recover the filing fee.

The Landlord testified that he served the Tenant the Application for Dispute Resolution and Notice of Hearing by posting on the door and via personal delivery on July 13, 2011; however the Tenant did not appear at the hearing. The Landlord, through his testimony, successfully demonstrated sufficient delivery of the documents under Section 89 of the Residential Tenancy Act (the "Act"). Thus the hearing proceeded in the Tenant's absence.

The Landlord appeared, gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and make submissions to me.

Issue(s) to be Decided

Has the Tenant breached the Residential Tenancy Act (the "Act") or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Background and Evidence

There is no written tenancy agreement. The Landlord testified that this month to month tenancy began three and ½ years ago, monthly rent is \$550.00, and a security deposit of \$250.00 was paid by the Tenant at the beginning of the tenancy.

The Landlord gave affirmed testimony that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on July 3, 2011, by posting on the door. The Notice stated the amount of unpaid rent was \$550.00.

The only evidence submitted by the Landlord was a copy of the Notice, which did not list an effective date of the Notice.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained the Tenant had five days to dispute the Notice.

I have no evidence before me that the Tenant applied to dispute the Notice. The Landlord provided affirmed testimony that the Tenant made two rent payments for July and August since the issuance of the Notice, but did not do so until August 4, 2011. Thus the tenant does not currently own any rent, but the Landlord is still seeking an order of possession due to the July and August rent not being paid until August 4, 2011.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

Section 52 of the Residential Tenancy Act (the "Act") states that in order for a notice to end tenancy to be effective, it must, among other things, state the effective date of the Notice.

Based on the aforementioned lack of effective date of the Notice, in other words, no move out date was listed, I find the 10 Day Notice to End Tenancy said by the Landlord to have been issued on June 3, 2011, does not meet the form and content required under section 52 of the Act. Therefore, the 10 Day Notice to End Tenancy is invalid and of no force or effect.

Due to the above, I hereby **dismiss** the Landlord's application, **without leave to reapply pertaining to this Notice**, with the effect that this tenancy continues until it may otherwise end under the Act.

Conclusion

The Landlord's application is 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: August 18, 2011.

Residential Tenancy Branch