



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, a monetary order for unpaid rent, money owed or compensation for damage or loss, authority to retain the tenant's security deposit, and to recover the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and to respond each to the other, and make submissions to me.

The parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

Issue(s) to be Decided

Did the landlord provide sufficient evidence to determine if the 10 Day Notice to End Tenancy was effective?

Is the Landlord entitled to an Order of Possession and a Monetary Order?

Background and Evidence

I heard testimony that this tenancy began on June 1, 2011, and monthly rent is \$1,600.00. Despite this, I reviewed evidence of the landlord showing a tenancy agreement signed only by the tenant's brother on July 2, 2011, which, according to the landlord's testimony, added that brother as a tenant. The landlord stated that she did not consult the tenant about adding his brother as a tenant, but instead made the unilateral decision to add the brother because he was living there.

The tenant stated he knew nothing about his brother being added to the tenancy agreement until his brother came home with a signed tenancy agreement, that he

strongly disagreed with his brother being listed as a tenant, and that he himself did not have a written tenancy agreement.

The landlord issued the tenant multiple 10 Day Notices to End Tenancy for Unpaid Rent (the "Notice"), the most recent being dated September 25, 2011, delivered via posting on the door. The Notice did not list an amount of unpaid rent as the form was an outdated form and the 2nd page was not included into evidence.

Additionally, the Notice issued directly prior to that Notice was dated September 13, 2011, again on an outdated form, listed unpaid rent of \$1,600.00.

The landlord supplied evidence which listed different payments of rent in June, July, August and September, but, according to the landlord's testimony and evidence, some of the sums collected she applied towards payment of a security deposit.

Additionally the landlord supplied a letter written from her to the tenant informing him that any payments made would be applied towards a "damage" deposit.

The landlord's evidence indicated that some rent was collected from the tenant's brother.

In response, the tenant stated that the problems arose due to a failed relationship between the parties.

The tenant submitted that he was uncertain of the amounts of rent which may be owed as he did not understand how the landlord applied the payments.

The tenant submitted that the landlord has rented out the rental unit for November 1, 2011, despite him still being in the rental unit.

Analysis

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

In the circumstances before me, the landlord supplied deficient and inconclusive documentary evidence which I find does not establish the amount of rent owed, if any, by the tenant. For instance, the documents submitted reflected payments, but some of the payment was to be used for a "damage" deposit, as decided by the landlord. It was unclear to me from a review of the evidence, which had been submitted in a haphazard

manner, if the landlord was still attempting to include a payment of a “damage” deposit towards rent.

Section 20 of the Residential Tenancy Act states that a landlord must not require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement.

I therefore find that the landlord contravened the Act by applying rent payments towards payment of a security deposit, and further it is not clear if the landlord was attempting to collect a security deposit from both the tenant and the tenant’s brother.

Therefore I find all the documents listing the tenant’s alleged overdue rent to be unsubstantiated and that the landlord has not proven the Notice to End Tenancy was valid.

Conclusion

Based on the aforementioned lack of proof of overdue rent, I find all the 10 Day Notices to End Tenancy do not meet the form and content of section 46. Therefore, the 10 Day Notices to End Tenancy are invalid and of no force or effect. Having found the 10 Day Notices, to be invalid, I hereby **dismiss** the landlord’s application for an order of possession, **without leave to reapply**, with the effect that the tenancy continues until otherwise ended under the tenancy agreement or Residential Tenancy Act.

I further find that the landlord’s evidence fails to establish that she is entitled to receive a monetary order and I therefore dismiss her application for a monetary order.

I decline to award the landlord recovery of her filing fee.

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: October 26, 2011.

Residential Tenancy Branch