



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order or Possession for unpaid rent and a Monetary Order for unpaid rent, for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail December 21, 2011. Mail receipt numbers were provided in the Landlord's evidence. Based on the Landlord's submission I find the Tenant was sufficiently served with notice of today's proceeding.

The Landlord appeared at the teleconference hearing, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. No one appeared on behalf of the Tenant, despite her being served notice of today's hearing in accordance with the *Act*.

Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement by failing to pay rent?
2. Has a valid 10 Day Notice to End Tenancy been served to the Landlord, in accordance with sections 46 and 52 of the *Residential Tenancy Act*?

Background and Evidence

After several attempts to determine the start date of the tenancy, (Halloween, October 1, 2011, October 31, 2011, or November 1, 2011) the Landlord affirmed that the parties entered into a written month to month tenancy agreement that began on November 1, 2011. Rent is payable on the first of each month in the amount of \$700.00 and on October 30, 2011 the Tenant paid him \$350.00 as the security deposit.

The Landlord advised that he served the Tenant a 10 Day Notice to End Tenancy (the Notice) on December 01, 2011 for rent that was due December 1, 2011 in the amount of \$760.00. The Landlord stated that the Tenant short paid him \$60.00 in November but that he could not advise how much was paid for November 2011 rent as he did not have a calculator with him.

After further discussion I began to explain to the Landlord how the documents he provided in evidence were incomplete and that I find the 10 Day Notice to be invalid. At this time the Landlord began to get upset and swear. I cautioned the Landlord to refrain from that type of language during the hearing and I pointed him to the *Residential Tenancy Branch (RTB)* telephone numbers on the notice of hearing letter so that he could direct his questions to the RTB staff as I was concluding the hearing. He became upset and stated "I am not finished here" to which I informed him the hearing was concluded and instructed him to disconnect from the hearing (in accordance with Rule # 8 of the *Residential Tenancy Branch Rules of Procedure*).

Analysis

I have carefully considered the aforementioned and the documentary evidence which included, among other things, an incomplete tenancy agreement, a 10 Day Notice that was signed and served December 1, 2011 stipulating rent of \$760.00 was due December 1, 2011, a copy of the proof of service document which indicates the 10 Day Notice was posted to the Tenant's door on December 1, 2011 at 9:00 a.m. in the presence of a witness.

The Tenancy agreement lists the Tenant's name however it does not list the following standard terms that are required for a tenancy agreement: Landlord's name; Landlord's service address; the address of the rental unit; the start date of the tenancy; the amount of rent that is due, nor does it list the day of the month that rent is due.

The Landlord has provided a copy of the 10 Day Notice to End Tenancy which was issued and served on December 1, 2011, with an effective date of December 10, 2011, for unpaid rent of \$760.00 which was due on December 1, 2011.

I find that the 10 Day Notice issued by the Landlord does not meet the form and content requirements of sections 46 and 52 of the Act as the Notice was issued and served December 1, 2011, for rent that was allegedly payable on December 1, 2011. A 10 Day Notice is a legal demand for payment of rent and cannot be issued or served until the

payment of rent is past due. In this case, if rent was due on the first of each month, the 10 Day Notice cannot be issued or served until December 2, 2011.

Based on the aforementioned I find the 10 Day Notice to End Tenancy issued on December 1, 2011, is invalid and I hereby dismiss the Landlord's application.

As the Landlord has not been successful with his application, I decline to award recovery of the filing fee.

Conclusion

The 10 Day Notice to End Tenancy issued December 1, 2011, is invalid and is of no force or effect.

I HEREBY DISMISS the Landlord's application.

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: January 10, 2012.

Residential Tenancy Branch