



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, MNR
Tenant: CNR, MNDC, RP

Introduction

This hearing was convened by way of conference call in response to applications filed by the landlord and by the tenant. The landlord has applied for an Order of Possession for unpaid rent or utilities and a monetary order for unpaid rent or utilities. The tenant has applied for an order cancelling a notice to end tenancy for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and for an order that the landlord make repairs to the unit, site or property.

The landlord attended the conference call hearing, provided evidence in advance of the hearing, and gave affirmed testimony. However, despite being sent a notice of hearing for the tenant's application by the Residential Tenancy Branch, and being served with a copy of the Landlord's Application for Dispute Resolution and notice of hearing by personally handing it to the tenant on January 25, 2012, the tenant did not attend. The landlord testified that an Information Officer at the Residential Tenancy Branch told the landlord that the tenant could not be served by registered mail because the landlord and the tenant both reside in the same house, and the mail goes to the same mailbox. The landlord attempted to serve the tenant personally, but the tenant was not at home for several days, and the landlord served the tenant personally on January 25, 2012 upon the tenant's arrival back at the rental unit.

This matter was set for hearing by telephone conference call at 1:30 p.m. on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the landlord. The tenant/applicant failed to attend to present the tenant's claim, and the landlord appeared and was ready to proceed. In the absence of the tenant who made an application, I dismiss the tenant's claim without leave to reapply. I made no findings of fact or law with respect to the merits of the tenant's application. The hearing continued with respect to the application filed by the landlord.

All evidence and testimony provided have been reviewed and are considered in this Decision.

Issue(s) to be Decided

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

Is the landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

The landlord testified that this month-to-month tenancy began on November 1, 2011 and the tenant still resides in the rental unit. Rent in the amount of \$500.00 per month is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$250.00.

The landlord further testified that the tenant failed to pay rent when it was due for the month of January, 2012. The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on January 3, 2012 by posting it to the door of the rental unit, a copy of which was provided in advance of this hearing. The notice is dated January 3, 2012 and contains no expected date of vacancy. The notice states that the tenant failed to pay rent in the amount of \$500.00 that was due on January 1, 2012 and \$110.00 for TV. The landlord testified that cable was not included in the rent and the tenant's obligation was to pay the landlord for basic cable as well as extended cable at the request of the tenant.

The landlord requests an Order of Possession as well as a monetary order in the amount of \$660.00 which includes the filing fee for the cost of the landlord's application.

Analysis

Firstly, with respect to service of documents, I find that the tenant has been served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities as declared by the landlord. However, the *Residential Tenancy Act* states that a party who makes an application for dispute resolution must serve a copy on the other party within 3 days of making it. The landlord testified that the tenant was served on January 25, 2012, and the landlord's application was filed on January 12, 2011.

With respect to the notice to end the tenancy, the notice does not contain an expected date of vacancy. The *Act* states that once served, the tenant has 5 days to pay the rent in full or apply for dispute resolution disputing the notice, and if the tenant fails to do either, the tenant is conclusively presumed to have accepted that the tenancy ends on

the effective date of the notice, which must be no earlier than 10 days after the date the tenant is served with the notice, or deemed served with the notice. There is no effective date on the notice in this case, and therefore, the landlord's application for an Order of Possession cannot succeed.

The landlord is at liberty to re-serve a notice to end tenancy upon the tenant if rent remains unpaid. The landlord must complete the form completely in order to be successful in obtaining an Order of Possession. Further, if the landlord serves the tenant with another notice to end the tenancy, and then the landlord applies for dispute resolution to obtain a monetary order and an Order of Possession, the landlord must serve the tenant with the application and notice of hearing within 3 days.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed without leave to reapply.

The landlord's application is also hereby dismissed without leave to reapply as it relates to the notice to end tenancy dated January 3, 2012.

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 31, 2012.

Residential Tenancy Branch