



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on the Notice to End Tenancy for Unpaid Rent dated January 4, 2012 and a monetary order for rent owed.

Although served with the Application for Dispute Resolution and Notice of Hearing in person on January 19, 2012, the tenant did not appear.

Issue(s) to be Decided

The landlord stated that they are no longer seeking an Order of Possession as the tenant vacated the unit on February 6, 2012. The landlord still seeks a monetary order claiming unpaid rent.

The remaining issue to be determined, based on the testimony and evidence, is whether or not the landlord is entitled to monetary compensation.

Background and Evidence

The landlord testified that the tenancy began on August 15, 2011, with rent of \$700.00 per month due on the 15th day of each month and no security deposit was paid. The landlord testified that when the tenant failed to pay \$700.00 rent for the period from December 15, 2011 to January 14, 2012, a 10-Day Notice to End Tenancy for Unpaid Rent was issued and served. The landlord testified that the tenant also failed to pay rent for the period from January 15, 2012 to February 14, 2012.

Preliminary Issue

No copy of the Ten Day Notice to End Tenancy for Unpaid Rent, upon which the application was based, was in the file, nor on record as having been received by the Residential Tenancy Branch in evidence. However, the landlord testified that a copy of this Ten-Day Notice was submitted to the Residential Tenancy Branch as evidence to the file. Although late evidence is not usually allowed, the landlord's testimony was accepted and the landlord was permitted to fax in a copy of the Ten Day Notice to End Tenancy for Unpaid Rent which they had served on the tenant on January 4, 2012.

However, the fax that was received did not include the two-page copy of the Ten Day Notice to End Tenancy for Unpaid Rent. Instead of the Notice, the landlord had only faxed a “*PROOF OF SERVICE*” form attesting that the missing Ten Day Notice to End Tenancy for Unpaid Rent form had been served to the tenant by leaving it personally with her on January 4, 2012. Unfortunately there was no copy of the actual Notice attached.

In order to make a determination on the landlord’s application, a copy of the Ten-Day Notice, upon which an eviction and monetary claim is solely based, must be part of the evidence reviewed to justify and support a successful monetary claim. Due to this missing evidence, I find that the matter before me cannot proceed and the application must therefore be dismissed.

Conclusion

Due to insufficient evidence, I find that the landlord has not met the burden of proof and I hereby dismiss the landlord’s application 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: February 07, 2012.

Residential Tenancy Branch