



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR OPQ OPB MNSD MNR MND FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain Orders of Possession for unpaid rent or utilities, the Tenant does not qualify for subsidized housing, the Tenant has breached an agreement with the Landlord, and a Monetary Order for unpaid rent or utilities, to keep all or part of the pet and/or security deposit, for damage to the unit, site or property, and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing and gave affirmed testimony.

Issue(s) to be Decided

1. Has a valid 10 Day Notice to End Tenancy been issued in accordance with sections 52 and 46 of the *Residential Tenancy Act*?
2. Have the parties entered into a written agreement in addition to the tenancy agreement that has been breached by the Tenants?

Background and Evidence

The Landlord attended and affirmed the month to month tenancy began on August 1, 2011 and was put to writing October 14, 2011. Rent is payable on the first of each month in the amount of \$1,200.00 and on July 31, 2011 the Tenants had paid the accumulated amount of \$400.00 towards the security deposit.

The Landlord confirmed she did not submit documentary evidence in support of her claim and she wished to proceed with her application for orders of possession and monetary claim.

The Tenant disputed the Landlord's testimony arguing that they had a written agreement whereby rent was not payable.

Analysis

When a party makes a claim against another party, the burden of proof lies with the applicant. In this instance, the burden of proof is on the Landlord to prove a 10 Day Notice was issued and served upon the Tenants in accordance with the Act, and that the parties entered into a written agreement in addition to the tenancy agreement, which the Tenants breached.

The Landlord did not submit documentary evidence, such as a copy of the 10 Day Notice, the tenancy agreement, or the alleged written agreement, in support of her claim.

The hearing package contains instructions on evidence and the deadlines to submit evidence, as does the Notice of Hearing provided to the Tenant.

The Notice to End Tenancy document is not a mere technicality. In fact, it is hard to imagine another document being more relevant or material to the Landlord's claim, in particular when she is asking to have this tenancy ended as a result of issuing this document.

The responsibility of proving a claim is on the person making the claim. As the Landlord failed to provide a copy of the 10 Day Notice and written agreements, I find the Landlord has provided insufficient evidence to prove her claim. Accordingly, I dismiss the claim.

Conclusion

I HEREBY DISMISS the Landlord's application.

I have made no findings of fact or law pertaining to the 10 Day Notice; therefore the Notice to End Tenancy is not cancelled.

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: March 07, 2012.

Residential Tenancy Branch