



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MT, CNR

Introduction

This conference call hearing was convened in response to two applications for dispute resolution as follows:

By the landlord: as an application for an Order of Possession for unpaid rent.

By the tenant: as an application for more time to make an application to cancel a Notice to End Tenancy; to cancel a Notice to End Tenancy for unpaid rent; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Should the notice to end tenancy be set aside, and should the tenancy continue?

Are the tenants entitled to recover the filing fee?

Background and Evidence

The rental unit consists of an apartment in a multi-unit complex. This tenancy started in 1993. The current rent is \$935.00 per month. The landlord testified that the tenants were late paying rent for February 2012, and that on February 2, he served them a 10 Day Notice to End Tenancy by posting the notice on the tenants' door. He said that the tenants gave him a cheque on February 8, 2012, and that it was returned "NSF" from the bank. The landlord said that notice was given to the tenants and that they paid by certified cheque on February 22, 2012.

The tenants testified that the notice to end tenancy was dropped in their mailbox and not taped on the door. They said that they were deeply embarrassed to discover that their cheque was NSF, and that they immediately paid by certified cheque.

The landlord corrected his testimony and confirmed that he dropped the notice in the tenants' mailbox. In his documentary evidence, the landlord provided a copy of the 10 Day Notice to End Tenancy served on the tenants. The notice showed that it was served in person, that the date of service was the same as the effective date, and that it was not signed and no name was printed. The landlord stated that the notice served on the tenants was signed, but that he did not make a photocopy of that version. The tenants stated that their version was not signed either.

Analysis

Section 52 of the *Residential Tenancy Act* provides in part that in order to be effective, a notice to end tenancy must be signed by the landlord.

I find that the landlord contradicted his testimony and that his evidence lacks credibility. If the landlord relies on a Notice to End Tenancy as evidence to support the grounds to end a tenancy, it is expected that the documentary evidence being produced at the hearing is the same as the one served on the tenant. I find that the tenant was not

served in accordance with the Act and therefore the notice to end tenancy is of no force or effect.

Conclusion

The tenancy will continue. If the landlord has grounds to end this tenancy, the landlord is at liberty to issue a new Notice to End Tenancy compliant with statute.

Since the tenants were successful, I award the tenants recovery of the \$50.00 filing fee which I authorize them to deduct from the next rental payment.

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 12, 2012.

Residential Tenancy Branch