



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNSD, FF

Introduction

This hearing dealt with a landlord's application for an Order of Possession for unpaid rent and a Monetary Order to retain the security deposit or pet deposit. The tenants did not appear at the hearing. The landlord testified that she personally served each tenant with the hearing documents at the rental unit on April 16, 2012. In the absence of evidence to the contrary, I was satisfied the tenants were served with notification of this proceeding in a manner that complies with the Act. Therefore, I proceeded to hear from the landlord without the tenants present.

Issue(s) to be Decided

1. Has the landlord issued a valid Notice to End Tenancy and is the landlord entitled to an Order of Possession?
2. Has the landlord collected a security deposit and/or pet damage deposit that the landlord may retain?

Background and Evidence

The tenancy commenced January 3, 2012 and the tenancy agreement requires the tenants to pay a security deposit and pet damage deposit of \$325.00 each. The landlord received the security deposit but the tenants have not paid the pet damage deposit. On March 18, 2012 and on April 2, 2012 the landlord issued 10 Day Notices to End Tenancy for Unpaid Rent and Utilities (the Notices) and personally served the tenants with the Notices on the date issued, in the presence of a witness. In the space provided for the amount of outstanding rent on the Notices the landlord indicated the pet deposit of \$325.00 was outstanding.

As evidence for this hearing the landlord provided copies of the tenancy agreement, the 10 Day Notices; and, Proof of Service of the 10 Day Notices, signed by a witness.

Analysis

I accept the landlord's undisputed evidence that the tenants have failed to pay a pet damage deposit. However, a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities may only be served if a tenant has failed to pay unpaid rent or utilities. Since the tenants did not owe rent or utilities to the landlord when the landlord issued 10 Day Notices on March 18 and April 2, 2012 I find those Notices to be invalid and unenforceable.

As information for the parties, a landlord may end a tenancy for cause if a tenant fails to pay a security deposit or pet damage deposit within 30 days of the date it is required to be paid, under the terms of the tenancy agreement. To end the tenancy for this reason, the landlord must serve a 1 Month Notice to End Tenancy for Cause in the approved form.

Having found the 10 Day Notices to be unenforceable I dismiss the landlord's application in its entirety.

Conclusion

The landlord's application has been dismissed.

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: May 03, 2012.

Residential Tenancy Branch