



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession for unpaid rent, a monetary order for unpaid rent, to keep all or part of the security deposit and recovery of the filing fee.

Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is the landlord entitled to any of the above under the Act.

Background and Evidence

On April 6, 2012 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent; the tenant has not filed to dispute this notice.

At the outset of the hearing the tenant testified that she had not been served the hearing documents until May 3, 2012. The landlord directly refuted this testimony and stated that the documents had been served on the tenant on May 1, 2012. The landlord stated that although their application for dispute resolution was filed on April 19, 2012, the hearing documents were not served upon the tenant prior to May 1, 2012 as the tenant refused to open the door to the landlord.

The tenant also maintained that the April 6, 2012 notice to end tenancy was never served on her and that only the previous notice had been served on the tenant by the landlord. The landlord stated that he had served the notice by posting to the door and then stated that it had been given to the tenant's minor child.

The landlord testified that the tenant has not paid rent for the past 6 months and currently owes the landlord \$4500.00 in unpaid rent. The tenant acknowledged that the rent is unpaid and claimed that she had been trying to make payments but that the landlord had refused them. The tenant questioned if the tenancy could be ended by

mutual agreement however the tenant refused to make such an agreement during this hearing.

Both parties repeatedly accused the other of being dishonest in their testimony regarding the service of the notice to end tenancy and the hearing documents.

Analysis

Based on the above facts I find that the landlord is not entitled to an order of possession for unpaid rent or a monetary order for unpaid rent.

When one party provides testimony/evidence of the events in one way and the other party provides an equally probable but different testimony/evidence of the events, then the party making the claim has not met the burden on a balance of probabilities and the claim fails. Therefore in this case, the landlord has not proven service of the notice to end tenancy on the tenant. The landlord claims service by posting to the door and the tenant claims that the notice was never received.

The landlord has also not complied with section 59(3) of the Act and served the hearing documents upon the tenant within 3 days of the landlord's application.

Residential Tenancy Act section 59(3) *Except for an application referred to in subsection (6), a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.*

The landlord's 10 Day Notice to End Tenancy for Unpaid Rent dated April 6, 2012 is hereby set aside with the result that the tenancy continues uninterrupted.

The landlord's application is dismissed without leave to reapply.

Conclusion

The landlord's 10 Day Notice to End Tenancy for Unpaid Rent dated April 6, 2012 is hereby set aside with the result that the tenancy continues uninterrupted.

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 8, 2012

Residential Tenancy Branch