



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 for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, to keep the security deposit, and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. When was the 10 Day Notice served to the Tenant?
2. Is the 10 Day Notice issued in accordance with sections 46 and 52 of the *Residential Tenancy Act*?
3. If so, has the Landlord met the burden of proof to end this tenancy in accordance with section 55 of the Act?

Background and Evidence

The parties agreed they entered into a month to month tenancy agreement that began on May 1, 2010. Rent is payable in advance, on the first of each month in the amount of \$680.00 and prior to May 1, 2010 the Tenant paid \$340.00 as the security deposit.

The Landlord affirmed that when his accountant was compiling his information for tax time they determined the Tenant short paid her October 2011 rent by \$138.94 so he issued her a 10 Day Notice on April 18, 2012. The Landlord's Agent served the Tenant's boyfriend, who they believe lives there, with the Notice at the rental unit. The Landlord advised he does not live in the same city as the rental unit where his Agent resides.

The Landlord confirmed the Tenant paid the outstanding balance on April 27, 2012 so the Landlord issued a receipt for use and occupancy only and told the Tenant that he did not want to re-instate the tenancy because of the way he was treated by the Tenant and her boyfriend. He advised they swore at him and harassed him by numerous text messages. He confirmed the Tenant paid the May 1, 2012 rent in full and he issued a receipt for use and occupancy only.

The Tenant affirmed she did not receive the 10 Day Notice until she picked up the registered mail package that had the hearing documents with it on April 27, 2012 and she made the payment that same day. She argued that her boyfriend does not live with her and they did not use foul language in any of their conversations with the Landlord. The Tenant advised she did not dispute the 10 Day Notice because she paid it the same day she received it.

Analysis

When a tenant is served a 10 Day Notice to End Tenancy the onus lies with the Landlord to prove the 10 Day Notice was served to the Tenant in accordance with section 89 of the Act.

In this case the 10 Day Notice was allegedly served by the Landlord's Agent to the Tenant's boyfriend, whom the Landlord alleges resides with the Tenant. The Tenant denies that her boyfriend lives with her and stated she did not receive the 10 Day Notice until April 27, 2012.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this case, the Landlord has the burden to prove the 10 Day Notice was served to the Tenant on April 18, 2012, in accordance with section 89 of the Act. In the absence of the Landlord's Agent, who conducted the service, the only evidence before me was disputed verbal testimony which I find to be insufficient to meet the Landlord's burden of proof. Accordingly I dismiss the Landlord's application.

The Landlord has not been successful with his application; therefore, he bears the burden of the cost to file this application.

The Tenant understands that if her, her boyfriend or any other guest interfere with the Landlord or his Agent, while they are conducting their business, and it is verified by the Landlord in the future, the record of the events from this hearing would form part of the

Landlord's case should it again come before a dispute resolution officer for consideration.

Conclusion

The 10 Day Notice to End Tenancy dated April 18, 2012, is HEREBY CANCELLED and is of no force or effect.

The Landlord's application is HEREBY DIMISSED.

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 15, 2012.

Residential Tenancy Branch