



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing dealt with an application by the landlords for an order of possession and a monetary order. Despite having been personally served with the application for dispute resolution and notice of hearing on June 11, 2012, the tenant did not participate in the conference call hearing.

Issues to be Decided

Are the landlords entitled to an order of possession?

Are the landlords entitled to a monetary order as claimed?

Background and Evidence

The undisputed evidence of the landlords is as follows. The tenant is obligated to pay \$1,060.00 in rent in advance on the first day of each month. The tenant paid just \$800.00 of the rent due in the month of April 2012 and paid no rent whatsoever in the months of May and June 2012.

The landlord in attendance at the hearing testified that the tenant was served with the 10 day notice to end tenancy on June 11, at the same time the landlord served the application for dispute resolution and notice of hearing. I questioned the landlord carefully as her testimony did not agree with what had been written on the application for dispute resolution. I ensured that the landlord knew the difference between the application for dispute resolution which she served on June 11 and the notice to end tenancy and the landlord insisted that those documents were served on the tenant on the same date.

Analysis

Where the application for dispute resolution conflicts with the landlord's oral testimony, I prefer the oral testimony. Despite the fact that the application for dispute resolution states that the notice to end tenancy was served on May 31, I find that the notice to end

tenancy was served on June 11 at the same time the application for dispute resolution and notice of hearing were served on the tenant.

The Act provides that tenants who are served with a notice to end tenancy for unpaid rent have 5 days in which to either pay outstanding rent or dispute the notice. I find that the landlords' application for an order of possession was brought prematurely as they did not give the tenant the opportunity to dispute the notice before filing their claim and I find that the tenant may have been led to believe that it was futile to dispute the notice. For this reason, I dismiss the claim for an order of possession with leave to reapply.

I find that the tenant owes \$260.00 in rent for the month of April 2012, \$1,060.00 for the month of May 2012 and \$1,060.00 for the month of June 2012 and I award the landlords \$2,380.00. I enclose with this decision a monetary order which may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The claim for an order of possession is dismissed with leave to reapply. The landlords are granted a monetary order for \$2,380.00.

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: June 27, 2012

Residential Tenancy Branch