



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

OPR, MNR, FF

Introduction

This hearing dealt with an application submitted by the landlord seeking an Order of Possession based on a Ten Day Notice to End Tenancy for Unpaid Rent that was not submitted into evidence. The landlord was also seeking a monetary order for accrued rental arrears owed.

Despite being served by registered mail sent on June 7, 2012, the respondent did not appear.

Issue(s) to be Decided

The issues to be determined on the landlord's application based on the testimony and the evidence are:

- 1) Is the landlord is entitled to an Order of Possession based on an alleged Ten Day Notice to End Tenancy for Unpaid Rent ?
- 2) Is the landlord is entitled to a monetary compensation?

Background and Evidence

The landlord testified that the tenancy began prior to November 2011, but was not certain how long the tenant had been living in the unit before that date. The landlord stated that he was not sure how much of a security deposit was paid, if any. The landlord testified that the rent was \$710.00 per month and stated that there was no written tenancy agreement, so this could not be submitted into evidence.

The landlord testified that the tenant has refused to pay any rent at all since November 2011 and had accrued arrears of \$4,970.00. The landlord testified that he served the tenant with a Ten Day Notice to End Tenancy for Unpaid Rent on May 26, 2012. The landlord stated that he did not retain any copy of the Ten Day Notice to End Tenancy for Unpaid Rent for his records and thus could not provide a copy of what documents were served on the tenant. The landlord also stated that he was not able to provide a copy of the tenant ledger.

Analysis

Under section 46 of the Act, a landlord may terminate the agreement by serving a Ten Day Notice to End Tenancy for Unpaid Rent on the tenant. If the tenant receiving the Notice has not disputed the Notice within 5 days, there is a conclusive presumption, under the Act, that the tenant has accepted that the tenancy will end on the date specified and the tenant must move out. A landlord may make an application for dispute resolution to enforce the Notice.

In this instance, the landlord made an application for dispute resolution seeking an Order of Possession and a monetary order based on the Notice. But no copy of the Ten Day Notice to End Tenancy for Unpaid Rent, upon which the landlord's request for possession and compensation was based, had been submitted into evidence.

In fact, there was no documentary evidence to even confirm that there is a tenancy between these two parties.. That being said, I accept that this tenancy does exist and I accept that the tenant was served with the Notice of Hearing.

However, with respect to determining whether a valid and enforceable Ten Day Notice to End Tenancy for Unpaid Rent was served on the tenant by the landlord, I find that it is necessary that a copy of the Notice be in evidence before I can make a determination that it warrants enforcement.

Section 52 Of the Act states that, in order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

Because of the missing copy of the Ten Day Notice to End Tenancy for Unpaid Rent, I find that this application does not disclose sufficient information for me to make findings nor a determination based on the merits. For this reason I find that the landlord's application must be dismissed, and I do so with leave to reapply.

Conclusion

I hereby dismiss the application with leave to reapply. I make no findings on the merits of the Notice or claims.

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