



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were personally served to the Tenant on June 11, 2012. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 55 and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord stated that he and the Tenant entered into a verbal tenancy agreement which required the Tenant to pay monthly rent of \$1,300.00 by the first day of each month; that the Tenant was permitted to move into the rental unit on May 22, 2012; and that the Tenant has not paid the rent that was due on June 01, 2012 or July 01, 2012.

The Agent for the Landlord stated that the agreement was that the Tenant would pay for his own utilities during the tenancy; that the Tenant would contact the utility companies and place the utilities in his own name; that the Landlord terminated his utilities account for the unit as a result of this agreement; and that the Tenant does not currently owe utilities to the Landlord.

The Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of June 01, 2012, was posted on the door of the rental unit on

June 01, 2012. In the space on the Notice to End Tenancy that is designated for the amount of rent that is due, the Landlord has indicated that the Tenant owes rent in the amount of "\$June 2012". In the space on the Notice to End Tenancy that is designated for the amount of utilities rent that are due, the Landlord has indicated that the Tenant has failed to pay utilities in the amount of "\$1300 Rent" following a written demand on June 01, 2012.

Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant entered into a verbal tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$1,300.00 by the first day of each month.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that a Ten Day Notice to End Tenancy for Unpaid Rent, which was dated June 01, 2012, was posted on the door of the rental unit on June 01, 2012.

Section 46(1) of the *Act* entitles landlords to end a tenancy if rent is unpaid on any day after the day it is due by giving notice to end the tenancy on a date that is not earlier than 10 days after the tenant receives the notice. In the circumstances before me, I find that the Notice to End Tenancy for Unpaid Rent is of no force and effect, as it is dated on the day rent is due and it was posted on the door of the rental unit on the day rent was due. To be valid, the Notice must be served on any day after the rent is due, which in these circumstances would be June 02, 2012. I specifically note that the Notice to End Tenancy specifically notes that the Notice can be served on "any day after the rent was due, for unpaid rent".

I further find that the Notice to End Tenancy was flawed pursuant to section 46(2) of the *Act*, which stipulates that a notice served under this section must comply with section 52 of the *Act*. Section 52(e) of the *Act* stipulates that to be effective a notice to end tenancy must be in the approved form when given by the landlord. Although the Landlord used the correct Notice to End Tenancy that is generated by the Residential Tenancy Branch, I find that the form was incomplete because it did not specify, at the appropriate location, the amount of rent that was outstanding nor did it specify the date that outstanding rent was due.

Section 10(1) of the *Act* stipulates that the director may approve forms for the purposes of the *Act*. Section 10(2) of the *Act* stipulates that deviations from an approved form that do not affect its substance and are not intended to mislead does not invalidate the form used.

I find that the failure to identify the amount of rent that is due and the date the rent was due, at the appropriate location on the form, is a significant deviation from the approved form. The Notice to End Tenancy specifically informs the Tenant that it has five days to pay the rent. Given that the Notice to End Tenancy does not clearly inform the Tenant

of the amount of rent that is due, I find that the Tenant's ability to pay the overdue rent is impaired, to some degree.

I find that the information on the Notice to End Tenancy that declares the Tenant owes \$1,300.00 in utilities is inaccurate, as the Agent for the Landlord testified that the Tenant does not owe utilities to the Landlord. I find that the information on the Notice to End Tenancy that declares the Tenant was given a written demand to pay the utilities on June 01, 2012 is inaccurate, as the Tenant did not receive this written demand.

Conclusion

I find that the Notice to End Tenancy is of no force or effect as a result of the aforementioned flaws and I therefore dismiss the Landlord's application for an Order of Possession. The Landlord retains the right to serve the Tenant with another Notice to End Tenancy for Unpaid Rent if the Tenant if the Tenant does not pay the rent that is due.

I find that the Landlord's application has been without merit and I dismiss the Landlord's application to recover the fee for filing this Application for Dispute Resolution.

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: July 04, 2012.

Residential Tenancy Branch