



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, for compensation for damages to the rental unit and for other damage or loss under the Act or tenancy agreement, to recover the filing fee for this proceeding and to keep the Tenant's security deposit in partial payment of those amounts.

At the beginning of the hearing, the Landlord's agent said she attempted to serve the Tenant's spouse in person on July 10, 2012 with the Application and Notice of Hearing but she refused to take it and shut the door. Consequently, the Landlord's agent said she left the documents in the door jamb. The Tenant admitted that he received these documents and in the circumstances, I find that the Landlord's attempted personal service of the Tenant's spouse was sufficient for the purposes of s. 89 of the Act.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to compensation and if so, how much?

Background and Evidence

The Landlord claims that she has a tenancy agreement with the Tenant and served him with a 10 Day Notice to End Tenancy. The Tenant admitted that he received a 10 Day Notice but argued that the Landlord has not paid the gas bill with the result that he has suffered losses.

Analysis

In this matter, the Landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the Landlord's evidence is contradicted by the Tenant, the Landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

In this case, the Landlord provided no documentary evidence (including a copy of the 10 Day Notice to End Tenancy) in support of her application. Consequently, I am unable to determine if the 10 Day Notice that was served on the Tenant was a valid and enforceable Notice that complies with s. 52 of the Act and for that reason it is cancelled. This means that if the Tenant has still not paid the alleged outstanding rent, ***the Landlord will have to serve the Tenant with a new 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.*** In the absence of any evidence to support the balance of the Landlord's claim (with the exception of the filing fee), it is dismissed with leave to reapply.

Conclusion

The Landlord's application to recover the filing fee for his proceeding is dismissed without leave to reapply. The balance of the Landlord's application is dismissed with leave to reapply. 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 30, 2012.

Residential Tenancy Branch