



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNR, OPR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on the Notice to End Tenancy for Unpaid Rent dated May 11, 2012, a monetary order for rent owed and an order to retain the security deposit in partial satisfaction of the claim

Both parties appeared at the hearing and gave evidence.

Issue(s) to be Decided

The landlord is seeking an Order of Possession. The landlord is also seeking a monetary order claiming unpaid rent of \$2,592.22 accrued arrears due to shortfalls in payment of rent over a period of several months.

The issues to be determined based on the testimony and the evidence are:

- Whether or not the landlord is entitled to an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent
- Whether or not the landlord is entitled to monetary compensation for rent.

Background and Evidence

The landlord submitted into evidence the first page of a 10-Day Notice to End Tenancy dated May 11, 2012 with no effective date shown. The second page of the notice was missing. Also included in evidence was a copy of the tenancy agreement.

The landlord testified that, although only the first page of the Ten Day Notice to End Tenancy for Unpaid Rent was included in evidence, he had actually served the tenant with both pages of the Notice. The landlord testified that the tenant has not paid the arrears nor has the tenant vacated the unit and the landlord has requested an Order of Possession and a monetary order for rent owed.

The tenant acknowledged that rent was owed. The tenant testified that she was not properly served with the Ten Day Notice to End Tenancy for Unpaid Rent as it was left

with her son. The tenant testified that she also only received the first page of the Ten Day Notice to End Tenancy for Unpaid Rent.

Analysis

Based on evidence before me, I accept that the tenant owes the landlord rental arrears. However, I also accept the tenant's testimony that she was only served with page one of the Ten-Day Notice to End Tenancy for Unpaid Rent.

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the Regulations or the tenancy agreement.

Section 46 of the Act states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. However, the Act also states that a notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

Section 52 states that, in order to be effective, a notice to end a tenancy must be in writing and must also:

- (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. (my emphasis)

In this instance, I find that the landlord did not serve a complete Notice to the tenant and did not include page 2 of the Ten Day Notice to End Tenancy for Unpaid Rent in the evidence package submitted to the file. I find that, without verification that the proper and complete Notice was served, the notice must be found to be invalid. I find that the landlord must serve another two-page Notice to the tenant for it to be effective.

Based on the above facts I find that the landlord is not entitled to an Order of Possession nor a monetary order based on the defective Ten-Day Notice to End Tenancy for Unpaid Rent dated May 11, 2012.

Conclusion

I hereby dismiss the landlord's application in its entirety without leave.

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 25, 2012.

Residential Tenancy Branch