



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and to recover the cost of the filing fee from the Tenant for this application.

The Landlord affirmed that she personally served the Tenant on July 23, 2012 with the hearing documents. She did not serve the Tenant any evidence as he already had a copy of the 10 Day Notice and tenancy agreement served to him prior to the hearing.

I accept the Landlord's submission that the Tenant was personally served notice of this proceeding and I proceeded in the Tenant's absence.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?

Background and Evidence

At the outset of the hearing the Landlord affirmed she faxed nine pages of evidence to the *Residential Tenancy Branch (RTB)* on July 26, 2012. There was no evidence on file nor was there an electronic copy of the evidence. As there had been problems with the RTB fax machine in the recent past; I granted the Landlord leave to fax her evidence to me during the hearing.

The Landlord stated she faxed 9 pages which included eight pages of the tenancy agreement and 1 page for the 10 Day Notice. The fax was received and it was evident by the fax transmittal that only 8 pages were sent. The Landlord was granted the opportunity to re-fax the 10 Day Notice and the hearing continued.

The Landlord submitted that the tenancy is a fixed term that began on January 28, 2012 and is set to end on July 31, 2013. Rent is payable on the first of each month in the amount of \$1,120.00 and on January 16, 2012 the Tenant paid \$560.00 for the security deposit.

The Landlord stated that the 10 Day Notice was posted to the Tenant's door on July 3, 2012 for \$875.00 unpaid rent that was due on July 1, 2012. The Landlord stated that the Tenant has been making small payments. I asked the Landlord to tell me the dates the payments were made and the amounts received. The Landlord indicated she was looking at a tenant ledger however it was clear she was inputting information into either a calculator or computer. She confirmed she was adjusting the ledger as she went along and said the Tenant had owed a previous amount of \$320.00 prior to the \$875.00 due for July.

I explained to the Landlord that given her contradictory testimony that I would not be granting a Monetary Order as I cannot determine what amount is actually owed. I also explained that after I reviewed the 10 Day Notice if I determined it was valid I would be granting her an Order of Possession. The Landlord requested that I fax her my decision.

Analysis

The Landlord confirmed she did not serve the Tenant with any of her evidence which she was attempting to rely upon during this hearing. Not providing the other party copies of their evidence would be a contravention of section 3.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore as the Tenant has not been properly served with copies of the Landlord's evidence I find that the Landlords' evidence cannot be considered in my decision.

The hearing was completed over one hour ago and no other fax has been received by the Landlord. Therefore there is no copy of a 10 Day Notice before me to analyze.

Based on the forgoing I find there to be insufficient evidence to prove the Landlord's claim and it is hereby dismissed.

No findings of fact or law have been made in relation to a 10 Day Notice that was allegedly issued July 3, 2012.

Conclusion

I HEREBY DISMISS the Landlord's application.

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: August 16, 2012.

Residential Tenancy Branch