



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, OPR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

At the outset of the hearing the Agent for the Landlord testified that they had sent a copy of the 10 day Notice to End Tenancy with their evidence to the Tenants and the Branch by registered mail. The Tenants confirmed receiving the 10 day Notice to End Tenancy and a package of evidence from the Landlord, however, there was no Notice or evidence from the Landlord before me.

The Agent for the Landlord then testified that perhaps the 10 day Notice to End Tenancy and evidence had not been sent to the Branch.

I attempted to receive the evidence regarding the 10 day Notice to End Tenancy through oral testimony, however, the parties could not agree on the Notice or on other documents in the evidence package.

The party that makes an application for monetary compensation against another party has the burden to prove their claim. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I also note the hearing package provided to each Applicant contains instructions on submitting evidence and the deadlines to submit evidence, as does the Notice of Hearing provided to the parties.

The 10 day Notice to End Tenancy document is not a mere technicality. In fact, it is hard to imagine another document being more relevant or material to the Landlord's

claim, in particular when they are asking to have this document support the eviction of the Tenants.

The responsibility of proving a claim is on the party making the claim. As the Landlord failed to provide a copy of the Notice, I find the Landlord has provided insufficient evidence to prove the claim.

Therefore, I find the Landlord has failed to provide sufficient evidence to prove the allegations in this Application. I dismiss the Application with leave to reapply.

At the end of the hearing I also explained to the Tenants that under section 46 of the Act within five days of being served with a 10 day Notice, renters are required to pay all the rent due or file an Application to dispute the 10 day Notice to End Tenancy. Otherwise, renters must vacate the rental unit on the effective date set out in the Notice.

Conclusion

The Landlord's Application is dismissed due to insufficient evidence.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: October 25, 2012.

Residential Tenancy Branch