



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR

Preliminary Issues

At the outset of the hearing I informed the parties that my surname is the same as the Applicant Landlord to this dispute. I advised that I am not related to the Applicant and to my knowledge I have never met him or his wife; therefore I saw no reason why I would need to recuse myself. The parties were in agreement to continue with this proceeding.

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.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure.

Issue(s) to be Decided

1. Should the Landlord be issued an Order of Possession?
2. Should the Landlord be issued a Monetary Order?

Background and Evidence

Neither the Landlord nor his Property Manager could provide testimony as to the exact terms of the tenancy agreement. They noted that the Property Manager J.B. usually managed the tenancy matters and he was not able to attend the hearing today. They knew that the rent was \$700.00 per month however they could not provide testimony as to the start date of the tenancy agreement, if it was a lease or month to month, or the date when a security deposit was paid.

When I asked when and how the 10 Day Notices were served upon the Tenant the Landlord indicated that he thought they were served personally to the Tenant. He could not provide testimony as to how many pages were served or when they were served. The Property Manager stated that she was looking at copies of the first page of the

notices in an e-mail. I noted that there was evidence received from the Landlord however it included only the first page of 10 Day Notices which were issued on September 11, 2012, and October 6, 2012 and a copy of a settlement agreement that was entered into on June 12, 2012.

The Tenant did not deny being served 10 Day Notices however she said the 10 Day Notice that was issued to her on September 11, 2012 was only one page with nothing copied on the back side. She stated she did not have a Notice that was issued to her in October but she did have one that was issued to her in February 2012.

I asked the Landlord and Property Manager when the last payment of rent was made and neither could provide testimony as to when payments have been received.

The Tenant submitted that her rent is paid directly to the Landlord from Income Assistance so her most recent payment would have been issued near the end of September 2012 for the October 1, 2012 rent.

Analysis

When a Landlord makes an application to obtain an Order of Possession for unpaid rent and a Monetary Order for unpaid rent the burden of proof lies with the Landlord. In this case neither the Landlord nor the Property Manager who attended this hearing were able to provide testimony as to the standard terms of the tenancy agreement, to matters pertaining to service of the 10 Day Notices, or when payments were accepted as rent.

A Notice to End Tenancy can be waived and a new or continuing tenancy created, only by the express or implied consent of both parties. The question of waiver usually arises when a landlord has accepted rent from a tenant after the Notice to End Tenancy has been served. In this case there is evidence that the Landlord has continued to accept rent payments paid directly from Income Assistance.

I have carefully considered the foregoing and the Tenant's testimony that she received only 1 page of the two pages of the Notice issued September 2012. Upon review of the evidence submitted by the Landlord, I find that the 10 Day Notices were not issued and served upon the Tenant in accordance with the requirements of the Act which requires that the Tenant be issued the Notice in the prescribed form which is two pages in length.

Conclusion

I HEREBY DISMISS the application, without leave to reapply.

The 10 Day Notices issued September 11, 2012 and October 6, 2012 are HEREBY CANCELLED and are of no force or effect.

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: October 23, 2012.

Residential Tenancy Branch