



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNDC 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 or utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

The Landlords affirmed that the Tenant was served a copy of their application for dispute resolution and notice of hearing documents by registered mail on September 24, 2012. Canada Post tracking information was provided in the Landlords' oral submission. Based on the aforementioned I find the Tenant was sufficiently served notice of this proceeding, in accordance with the Act, and I proceeded in the Tenant's absence.

Issue(s) to be Decided

1. Has a valid 10 Day Notice been issued and served to the Tenant?

Background and Evidence

The Landlords submitted evidence which included among other things, copies of the following documents: the tenancy agreement, a 10 Day Notice to end tenancy (the Notice) issued September 2, 2012, and a resident payment ledger.

The Landlords confirmed they entered into a fixed term tenancy with the Tenant that began on July 1, 2012 and is set to end on June 30, 2013. They noted that the tenancy agreement stipulates that rent is payable on the first of each month in the amount of \$775.00 and on June 14, 2012 the Tenant paid \$387.50 as the security deposit.

The Landlords advised that on September 2, 2012 they issued and served the Tenant a 10 Day Notice for \$795.00 in unpaid rent when it was posted to the Tenant's door. A discussion followed whereby the Landlords confirmed there were errors on the 10 Day Notice which included: (1) an incorrect amount listed for unpaid rent of \$795.00 which included \$775.00 for September 2012 rent plus a \$20.00 late payment fee, and

(2) an incorrect date that rent was due listed as September 2, 2012. The Landlords argued that the Notice should be upheld because page two of the Notice states:

An error in this notice or an incorrect move-out date does not make it invalid

In closing, the Landlords confirmed that neither one of them has had any communication with the Tenant since issuing the Notice; however they have seen him at the rental unit so they know he is still residing there. The Landlords also confirmed that they have not served the Tenant with a second or corrected Notice. In addition to an Order of Possession the Landlords are seeking unpaid rent and late payments fees for September and October 2012.

Analysis

When a Landlord makes an application for an Order of Possession and a Monetary Order for unpaid rent the burden lies with the Landlord to prove they issued and served the Tenant with a 10 Day Notice which complies with the *Act*.

Section 46 of the Act stipulates as follows:

- (1) 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.
- (2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

The Residential Tenancy Policy Guideline # 11 provides that in order to be effective, a notice ending a tenancy must be **clear, unambiguous** and unconditional [emphasis added].

Fact and information sheets created by the *Residential Tenancy Branch* are intended to help the parties to a dispute understand issues that may be relevant. However, in the event of a discrepancy the *Residential Tenancy Act* prevails.

Notwithstanding the Landlords' arguments that I should find this 10 Day Notice valid because: (a) this proceeding was a participatory hearing during which they acknowledged and explained the presence of errors on the Notice; and (b) page 2 of the

Notice, (the fact sheet portion of the Notice), says "*an error in this notice or an incorrect move-out date does not make it invalid*", I find the Notice does not meet the requirements of the Act and it is therefore invalid. I make this finding in part because the Notice is not clear due to the following:

- (a) rent cannot be considered late if a Notice is issued on the same date that the Notice says rent is due;
- (b) the date listed on the Notice for when rent was due, September 2, 2012, is not the date rent was due in accordance with the tenancy agreement which stipulates rent is due on the first of each month; and
- (c) the amount listed on the Notice, \$795.00, is not the amount due for rent in accordance with the tenancy agreement which stipulates rent is \$775.00 per month.

Furthermore, the Landlords were aware of the errors and yet they made no attempt to clarify the errors with the Tenant, nor did they issue a corrected or an amended Notice.

As per the aforementioned, I find the 10 Day Notice issued September 2, 2012, to be of no force or effect. Accordingly, I hereby dismiss the Landlord's application.

The Landlord has not been successful with their application; therefore they must bear the burden of the cost of their application.

Conclusion

The 10 Day Notice to end tenancy issued September 2, 2012, is HEREBY CANCELLED and is of no force or effect.

The Landlord's application is HEREBY DISMISSED.

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 25, 2012.
