



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders including the following:

1. An Order of Possession – Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. A Monetary Order for compensation – Section 67; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Notice to End Tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on April 1, 2012. Rent of \$950.00 is payable monthly on or before the first day of each month. The Landlord collected \$475.00 as a security deposit.

The Landlord states that the Tenant failed to pay rental arrears of \$475.00 arising from September rent and that on October 2, 2012, the Tenant was served with a 10 day Notice to End Tenancy for Unpaid Rent (the “Notice”). The Landlord states that the Notice was served by a previous manager by posting the Notice on the door. No affidavit of service was provided as proof of the service, the manager did not appear as

a witness and the Tenant states that no Notice was received. The Tenant states that they did not learn about this dispute until they received the application and notice of hearing.

The Landlord states that the Tenant paid full rent for October and November 2012 and that the Landlord did not issue any receipts or to speak to the Tenants about the arrears. The Tenant denies that there are any arrears as the rent is paid directly from the Ministry to the Landlord. The Tenants provided copies of rent payments made directly to the Landlord from the Ministry for the month of October 2012.

Analysis

Section 46 of the Act provides that a landlord may end a tenancy by giving the tenant a notice to end tenancy. Given the Tenant's evidence that no Notice was received and considering that the Landlord did not serve this document and did not have the person who served this document provide evidence of this service, I find on a balance of probabilities that the Landlord has failed to establish that the Tenant was given the Notice. I therefore dismiss the Landlord's application with leave to reapply.

Conclusion

The application is dismissed with leave to reapply.

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: January 26, 2012.

Residential Tenancy Branch