



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession and a Monetary Order for unpaid rent. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

I determined that the landlord did not serve the landlord's evidence package upon the tenant. The tenant did not submit any evidence to the Branch. Both parties were provided the opportunity to make verbal submissions with respect to their positions.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid rent and loss of rent?
3. Is the landlord entitled to retain the tenant's security deposit?

Background and Evidence

I was provided undisputed testimony that the tenant is required to pay rent of \$550.00 the second to last day of every month. The last time the tenant paid rent was for the month of November 2012.

The landlord submitted that the rent was short for the months of September 2012 through November 2012, in the amount of \$260.00, and that no rent has been received for December 2012 or January 2013. The tenant acknowledged that rent has not been paid for December 2012 or January 2013.

The landlord submitted that a 10 Day Notice to End Tenancy for Unpaid Rent was issued on December 29, 2012 and served upon the tenant. The tenant denied receipt of a 10 Day Notice.

The landlord initially testified that the 10 Day Notice was posted on the tenant's door on December 29, 2012. The landlord's agent then changed his testimony to say the 10 Day Notice was served to the tenant in person on December 29, 2012. The landlord confirmed that the 10 Day Notice was not posted.

I noted the landlord had included a photograph of the first page of a 10 Day Notice dated December 29, 2012 that appears to be posted to a door.

I noted that in filing this Application for Dispute Resolution on January 4, 2013 the landlord submitted, in writing, that the 10 Day Notice was posted on the tenant's door on December 12, 2012.

Analysis

The purpose of serving documents under the Act is to notify the person being served of their breach and the action being taken against them. When serving a 10 Day Notice to End Tenancy the landlord must serve the tenant with both pages of the Notice as the second page contains important information with respect to the issuance of the Notice and the tenant's rights and obligations upon receiving such a Notice.

Upon receipt of a 10 Day Notice a tenant has five days to pay the outstanding rent to nullify the Notice or file an Application for Dispute Resolution.

Where service of a document is under the dispute, the party who served the document bears the burden to prove it was served. The burden is based upon the balance of probabilities.

I found the landlord's changing and conflicting submissions with respect to service of a 10 Day Notice to be insufficient to satisfy me that the tenant was served with both pages of a valid 10 Day Notice.

In light of the above, I deny the landlord's request for an Order of Possession. The landlord is at liberty to serve another 10 Day Notice upon the tenant and file another Application for Dispute Resolution based upon that Notice if necessary.

As the tenant admitted that he has not paid rent, the landlord's monetary claims against the tenant are dismissed with leave.

Conclusion

The landlord failed to prove service of a 10 Day Notice upon the tenant. The landlord is at liberty to serve another 10 Day Notice and file a future Application for Dispute Resolution based upon that Notice. The landlord's monetary claims against the tenant are 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 29, 2013

Residential Tenancy Branch

