



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MNR, FF

Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession unpaid rent and breach of an agreement with the landlord. The landlord was also seeking a Monetary Order for unpaid rent and utilities, and late fees. The tenant did not appear at the hearing.

The landlord testified that the hearing package was personally served upon the tenant on July 29, 2013 at the rental unit. On August 12, 2013 the landlord submitted as proof of service a copy of the Notice of Hearing with what appears to be the initials of the tenant with the date Aug 29/13 written underneath. Beside that the landlord noted that this document was received and signed by the tenant July 29, 2013. The landlord testified that he personally served the tenant with the evidence package on August 8, 2013 at the rental unit.

Given the discrepancy in the proof of service submitted, I continued to hear from the landlord without the tenant present and reserved my decision regarding service with a view to determining the landlord's credibility as I heard more testimony.

Issue(s) to be Decided

Has the landlord established an entitlement to receive an Order of Possession and Monetary Order for unpaid rent and utilities?

Background and Evidence

The landlord submitted a written tenancy agreement indicating the tenancy started July 1, 2013 for a fixed term tenancy set to expire August 31, 2013 and that at the end of the fixed term the tenant is required to vacate the rental unit. The landlord confirmed that the tenant continues to occupy the rental unit. The tenancy agreement provides that the monthly rent of \$900.00 is payable on the 1st of the month and that the tenant is

responsible for paying for electricity. The landlord testified that the electric bill is in the landlord's name and then the tenants are required to pay the landlord upon receipt of a copy of the bill. Although the landlord included late fees in this claim, there is no requirement for the tenant to pay late fees in the tenancy agreement.

The landlord has applied for an Order of Possession based upon a 10 Day Notice to End Tenancy for Unpaid Rent issued July 4, 2013. The landlord submitted that the 10 Day Notice was given to the tenant in person on July 4, 2013.

I noted the amounts reflected on the 10 Day Notice were inconsistent with the provisions of the tenancy agreement and other documentary evidence submitted. For example: the 10 Day Notice indicates the tenant owed the landlord \$77.27 in utilities as of July 1, 2013. The electric bill provided as evidence by the landlord shows that this charge was for electricity billed to the landlord on May 14, 2013. Upon enquiry, the landlord stated that the tenant moved into the rental unit in the last couple of days of June 2013. When I pointed out the electric charge of \$77.27 pertained to days up to May 14, 2013 the landlord argued that the tenant should be held responsible for that bill as the unit was vacant before he moved in.

I also noted that the 10 Day Notice indicated the tenant owed rent of: "\$900.00 + 100.00 + 25.00" as of July 1, 2013. I asked the landlord to turn to the 10 Day Notice and explain the additional charges. It was apparent the landlord did not know what amounts appeared on the 10 Day Notice that was the subject of this dispute. I instructed the landlord to turn to page 2 of the 10 Day Notice on three more occasions. He asked to wait while he located it, which I did. Then, the landlord confirmed that he had the 10 Day Notice in front of him and was looking at page 2 of the Notice. However, when I asked him to recite the amounts that appeared on the 10 Day Notice his testimony was inconsistent with what appears on the 10 Day Notice submitted to me. Finally, I concluded the landlord did not have the 10 Day Notice in front of him.

Analysis

Dispute resolution proceedings are based upon the principals of natural justice and administrative fairness. In this case, the landlord is seeking an Order of Possession and Monetary Order and in the absence of the tenant I had only the landlord's submissions to make a decision as to whether the landlord is entitled to what he is seeking. Thus, in order to grant the remedies the landlord is seeking I must be satisfied that the submissions provided to me by the landlord, both orally and by way of written documentation, are credible.

After concluding the landlord had provided false testimony at least three times during the hearing I found the landlord to have almost no credibility and that continuing to the landlord's submissions unlikely to result in a fair and just decision. As I was unsatisfied that the landlord had provided credible verbal submissions I found that I had considerable reservations about the accuracy of the written documentation provided to me. Therefore, I have dismissed the landlord's Application for Dispute Resolution in its entirety.

Conclusion

The landlord's Application for Dispute Resolution has been dismissed in its entirety.

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: August 29, 2013

Residential Tenancy Branch

