



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Nav Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction:

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the fee for filing an Application for Dispute Resolution.

The Property Manager stated that he personally served the Application for Dispute Resolution and Notice of Hearing to the Tenant on August 15, 2013. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

The Chief Operating Officer stated that the rent is not currently in arrears. I therefore find that there is no reason to consider the application for a monetary Order for unpaid rent.

Issue(s) to be Decided:

Is the Landlord entitled to an Order of Possession for unpaid rent and to retain all or part of the security deposit?

Background and Evidence:

The Chief Operating Officer stated that this tenancy began on September 01, 2012; that the Tenant is required to pay monthly rent of \$1,050.00 by the first day of each month; and that the Tenant did not pay the rent that was due on August 01, 2013 until September 13, 2013.

The Manager stated that he placed a Ten Day Notice to End Tenancy for Unpaid Rent through the Tenant's mail slot. He stated that he is not in the office; that he does not have a copy of the Notice with him; and that he cannot recall the date he placed it

through the slot. When he was advised the Notice was dated August 02, 2013, he stated that he placed it through the mail slot on August 02, 2013.

A copy of an unsigned Ten Day Notice to End Tenancy was submitted as evidence. The Chief Operating Officer stated that the Landlord does not have a signed copy of the Notice to End Tenancy. The Manager stated that he always signs Notices to End Tenancy before serving them and that he signed this Notice to End Tenancy prior to placing it through the Tenant's mail slot.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$1,050.00 by the first day of each month; that the Tenant did not pay the rent that was due for August until September 13, 2013; and that a Ten Day Notice to End Tenancy was placed through the Tenant's mail slot on August 02, 2013.

I find that the Landlord submitted insufficient evidence to show that the Ten Day Notice to End Tenancy that was served to the Tenant was signed. In reaching this conclusion I was heavily influenced by the fact that the Landlord does not have a copy of a signed Notice. Although the Manager stated that he signed this Notice to End Tenancy before he placed it through the Tenant's mail slot, I find it entirely possible that he is mistaken. Although this may be his general practice, I am not satisfied he is certain that he did so in this instance. Given that he could not recall the date that he served the Notice, I am not confident that he can specifically recall signing this Notice.

Section 46(1) of the *Act* stipulates that a landlord may end a tenancy if rent is unpaid on any day after the rent is due by giving a notice to end tenancy. Section 46(2) of the *Act* stipulates that a notice to end tenancy under this section must comply with section 52 of the *Act*. Section 52(a) of the *Act* stipulates that to be effective a notice to end tenancy must be signed and dated by the landlord or the tenant giving the notice. As I have insufficient evidence to show that the Notice to End Tenancy that was served to the Tenant was signed, I find that the Notice was not effective, as the Landlord did not comply with section 52(a) of the *Act*.

As I have determined that the Ten Day Notice to End Tenancy was not effective, I dismiss the Landlord's application for an Order of Possession.

As the Tenant had not paid the rent that was due by the time the Landlord filed this Application for Dispute Resolution, I find that the Landlord's Application had merit at the time it was filed. I therefore find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

I authorize the Landlord to retain \$50.00 from the Tenant's security deposit in compensation for the fee paid to file this Application for Dispute Resolution.

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: September 23, 2013

Residential Tenancy Branch

