



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Lincoln Manor Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR

Introduction

This matter was conducted by way of Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the Act). The landlord applied for an order of possession and a monetary order for unpaid rent.

Preliminary Issue – Amount of Unpaid Rent

The landlord submitted a notice to end tenancy for unpaid rent dated November 2, 2013. The notice indicates that the tenant failed to pay rent of “\$417 + 25 + 442” that was due on November 1, 2013 and failed to pay utilities of \$34.57 following written demand on November 1, 2013. In their application for dispute resolution, the landlord claimed \$417 for “partial” rent. The tenancy agreement indicates that the tenancy began in 2006, and the monthly rent was \$880 at that time. The landlord did not submit any evidence to verify the current monthly rent, or to explain the additional \$25 indicated as unpaid rent on the notice to end tenancy.

In a notice to end tenancy for unpaid rent, a landlord may not claim any fees or amounts greater than the rent owed, aside from utilities, which are dealt with separately. Further, if claiming for unpaid utilities, the landlord must present the tenant first with a written demand for the utilities, and then must wait 30 days before claiming the unpaid utilities in a notice to end tenancy. In this case, the landlord does not verify either the amount of the current rent or the amount of \$442 claimed on the notice. Additionally, the utilities amount cannot be claimed on November 2, 2013 if written notice was only given the previous day. For these reasons, I find that the notice to end tenancy is invalid.

I note that the landlord served the tenants notice of the hearing by Xpresspost, which may not be accepted as proper service, particularly if the landlord does not provide evidence that a signature was required and that the tenant signed for the package.

Conclusion

The application for an order of possession is dismissed. It is open to the landlord to issue a new notice to end tenancy and apply for an order of possession pursuant to the new notice.

The monetary 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: December 12, 2013

Residential Tenancy Branch

