



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent and utilities pursuant to section 55;
- a monetary order for unpaid rent and utilities pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 11:15 a.m. in order to enable her to connect with this teleconference hearing scheduled for 11:00 a.m. Both landlords attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The male landlord (the landlord) entered written evidence and gave sworn testimony that he handed the tenant the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the 10 Day Notice) dated December 17, 2013, on December 27, 2013. The Proof of Service document the landlords entered into written evidence included the tenant's written confirmation that he handed her this Notice that date. The female landlord also signed the Proof of Service document confirming that she witnessed her husband, the male landlord, hand the 10 Day Notice to the tenant on December 27, 2013. I am satisfied that the landlords served the tenant with the 10 Day Notice in accordance with the *Act*.

The landlord testified that he handed the tenant a copy of the landlords' dispute resolution hearing package on January 22, 2014. I am also satisfied that the landlords served the tenant with the hearing package in accordance with the *Act*.

At the commencement of the hearing, the male landlord clarified that the landlords had already received a January 20, 2014 decision from another Arbitrator appointed under

the *Act* with respect to their application for a monetary award for unpaid rent and utilities, for authorization to retain the tenant's security deposit and for the recovery of the filing fee for that application. As the previous Arbitrator has awarded the landlords a monetary award of \$2,225.00, and has allowed the landlords to retain the tenant's security deposit of \$725.00, the male landlord withdrew the landlords' application for a monetary award. He testified that the landlords continued to seek an Order of Possession based on the 10 Day Notice. The landlords' application for a monetary award and authorization to retain the security deposit is withdrawn.

Issues(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent? Are the landlords entitled to recover their filing fee for this application from the tenant?

Background and Evidence

This two-year fixed term tenancy began on May 1, 2013. Monthly rent is set at \$1,450.00, payable in advance on the first of each month, plus 50% of the utilities. Although the tenant paid a \$725.00 security deposit at the beginning of this tenancy, the previous Arbitrator has authorized the landlords to retain that deposit.

The landlords' 10 Day Notice identified \$1,450.00 in rent owing as of December 1, 2013, and \$237.23 in utilities owing from November to December 2013. The landlord testified that the tenant has not paid anything further to the landlords since receiving the 10 Day Notice. The landlords requested the issuance of an Order of Possession.

Analysis

At the January 20, 2014 hearing, the landlords' application for an Order of Possession was dismissed because the landlords had provided only the Proof of Service document regarding their service of the 10 Day Notice and not the 10 Day Notice itself. As the Arbitrator was uncertain as to whether the landlords had issued the tenant a 10 Day Notice on the required Residential Tenancy Branch (RTB) form, she could not issue the landlords the Order of Possession they were requesting at that hearing.

The landlords' current application has been issued on the correct RTB form. A copy of the landlords' 10 Day Notice was entered into written evidence by the landlords.

Section 52 of the *Act* reads in part as follows:

52 *In order to be effective, a notice to end a tenancy must be in writing and must*

- (a) be signed and dated by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,*
- (c) state the effective date of the notice,...and*
- (e) when given by a landlord, be in the approved form...*

At the hearing, I noted that the landlords' 10 Day Notice did not identify an effective date for the notice, as required by section 52(c) of the *Act*. While section 53 of the *Act* provides me with broad powers to change an incorrect effective date on a landlord's notice to end tenancy, it does not enable me to insert an effective date when the landlord has failed to identify any effective date on the notice. Under these circumstances, I find that the landlords' 10 Day Notice is invalid because it does not include any effective date as is required by section 52(c) of the *Act*. I find that the 10 Day Notice is of no force or effect.

Conclusion

The landlords' application for a monetary award and for authorization to retain the tenant's security deposit is withdrawn.

I dismiss the landlords' application to obtain an Order of Possession on the basis of the 10 Day Notice of December 17, 2013, served on December 27, 2013, without leave to reapply. The 10 Day Notice is of no force or effect. This tenancy continues. As the landlords have been unsuccessful in their application, they bear the responsibility for their filing fee in this application.

If rent or utilities remain owing and the landlords continue to seek an end to this tenancy, they will need to issue a new 10 Day Notice, which meets all of the requirements of section 52 of the *Act*.

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 27, 2014

Residential Tenancy Branch

