



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MDSD & FF

Introduction

A hearing was conducted by conference call in the presence of a representative of the applicant and in the absence of a representative of the respondent. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

The 10 day Notice to End Tenancy was served by posting and sending by registered mail addressed to the rental unit. The Application for Dispute Resolution/Notice of Hearing was served by posting and registered mail. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?
- b. Whether the landlord is entitled to A Monetary Order and if so how much?
- c. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- d. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began prior to 1994. The present rent is \$460 per month payable in advance.

The representative of the landlord testified the respondent passed away on December 3, 2013. He further testified that a person who identified himself as the nephew of the deceased paid the rent for December and January. However, the nephew advised that he would not longer be paying the rent as he thought the will was not legal.

The rent has not been paid for February and March. The landlord testified that the family does not appear to be taking charge. The landlord has talked to the Public Guardian Office and they told him they would not be taking over the conduct of the estate. The representative of the landlord testified that there is a mother who is in an old age facility and a sister. There is also a nephew who paid he rent on two occasions. He is not aware of any offspring.

Decision:

I appreciate the landlord is in a difficult position. However, in my view the landlord has failed to properly identify the parties and failed to sufficiently serve the Application for Dispute Resolution. It appears the deceased may have had a will. If that is so the executor should have been served and identified as a respondent. Further, the respondent has passed away and the style of cause should indicate that the claim is against his estate. Finally, in my view it would be prudent for the applicant to serve a copy of the Application for Dispute Resolution/Notice of Hearing on the Executor (if any), the mother, sister, nephew and Public Guardian's Office.

As a result I determined that it was appropriate to dismiss the application with leave to re-apply.

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: March 18, 2014

Residential Tenancy Branch

