



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, FF

Introduction

This is an application filed by the landlord for an order of possession and a monetary order for unpaid rent, for money owed or compensation for damage or loss, to keep all or part of the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. The tenant confirmed receiving the notice of hearing package and the submitted documentary evidence on March 18, 2014 from the landlord and that no documentary evidence was submitted by the tenant.

Issue(s) to be Decided

Is the landlord entitled to an order of possession?
Is the landlord entitled to a monetary order?
Is the landlord entitled to retain the security deposit?

Background and Evidence

Both parties confirmed that there was a signed tenancy agreement, but that neither party submitted a copy. Both parties confirmed that the monthly rent was \$925.00.

The landlord states that the tenant was served with a 10 day notice to end tenancy issued for unpaid rent on March 10, 2014 by giving it to the tenant's son. The landlord has submitted a proof of service document which states that service was witnessed by the landlord's friend, K.D. The tenant disputes that a 10 day notice for unpaid rent was received from the landlord on March 10, 2014 and states that nothing was received until the notice of hearing package and documentary evidence was received on March 18, 2014. The notice states that rent of \$850.00 was not paid when due on March 3, 2014. The tenant confirmed in her direct testimony that only partial rent of \$550.00 was paid

for March 2014, \$200.00 for April 2014 and no rent was paid for May 2014. The tenant stated that she was withholding rent in a dispute over repairs to be made by the landlord. The landlord confirmed in his direct testimony that a \$200.00 payment was made and is amending the monetary claim from \$2,700.00 to \$2,500.00. The landlord states that he did not understand the 10 day notice to end tenancy issued for unpaid rent when he served it to the tenant

Analysis

Section 26 of the Residential Tenancy Act states,

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

(2) A landlord must provide a tenant with a receipt for rent paid in cash.

(3) Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not

(a) seize any personal property of the tenant, or

(b) prevent or interfere with the tenant's access to the tenant's personal property.

(4) Subsection (3) (a) does not apply if

(a) the landlord has a court order authorizing the action, or

(b) the tenant has abandoned the rental unit and the landlord complies with the regulations.

Section 52 of the Residential Tenancy Act states,

Form and content of notice to end tenancy

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,

(d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form.

It is clear that upon review of the 10 day notice to end tenancy issued for unpaid rent dated March 10, 2014 and the landlord's direct testimony that the landlord failed to complete the form by stating the effective date of the notice. On this basis, the landlord's 10 day notice to end tenancy issued for unpaid rent dated March 10, 2014 is deemed to be ineffective as it does not comply with section 52 of the Act and as such the landlord's application for an order of possession is dismissed. The landlord is at liberty to serve a new and complete 10 day notice to end tenancy issued for unpaid rent upon the tenant.

As for the monetary claim made by the landlord, I find that the landlord's claim as it is based upon the 10 day notice to end tenancy issued for unpaid rent has been deemed ineffective that the landlord has no basis for a monetary claim of \$2,500.00. The landlord has failed to provide any supporting evidence (for example a tenant ledger) that rent was in arrears. This portion of the application is dismissed. The landlord is at liberty to apply for a monetary claim for unpaid rent if a new 10 day notice to end tenancy for unpaid rent in proper form is served upon the tenant.

Conclusion

The landlord's 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: May 06, 2014

Residential Tenancy Branch

