



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OPR, MNR, MND, MNDC, FF

Introduction

This hearing dealt was convened as the result of the landlords' application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlords applied for authority to retain the tenants' security deposit, an order of possession for the rental unit due to unpaid rent, a monetary order for money owed or compensation for damage or loss, damage to the rental unit, and unpaid rent, and for recovery of the filing fee paid for this application.

The landlords appeared; the tenants did not appear.

The landlord testified that they served the tenants with the Application for Dispute Resolution and Notice of Hearing by leaving the documents with tenant JM on July 4, 2014.

Based upon the submissions of the landlords, I find tenant JM was served notice of this hearing and the landlords' application in a manner complying with section 89(1) of the Residential Tenancy Act and the hearing proceeded against tenant JM in the tenant's absence.

The landlords were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Are the landlords entitled to an order of possession for the rental unit, monetary compensation, and for recovery of the filing fee paid for this application?

Background and Evidence

The landlords were questioned about a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) which was allegedly issued to the tenants, and which was the subject of this dispute resolution hearing as they were seeking to end the tenancy based upon unpaid rent. In response, the landlords stated that they had in fact issued the tenants such a notice, which they submitted into evidence.

Upon examination of the document submitted into evidence, the subject notice to the tenants seeking an end to the tenancy was in handwritten letter form, dated June 2, 2014, addressed to the tenants, informing the tenants of the amount of unpaid rent, an unpaid “damage” deposit, and that they were to vacate the rental unit by June 13, 2014, if the tenants failed to make satisfactory payment arrangements.

In further response to another question, the landlords confirmed not being aware of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities form available on the Residential Tenancy Branch (“RTB”) website at the time that their letter was issued to the tenants, but have since become aware of the Notice.

Analysis

Section 46(1) of the Act states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice and such notice is in compliance with Section 52 of the Act, requiring among other things, that the notice be on the approved form.

In this case, the landlord has issued no such notice in the approved form to the tenants, and I am therefore unable to grant them an order of possession for the rental unit under section 55(2) of the Act.

Due to the above, I find that the landlords have submitted insufficient evidence to support their application and I therefore dismiss the portion of the landlords’ application for an order of possession for the rental unit, without leave to reapply.

As the portion of the landlords' application for monetary compensation is based upon an invalid notice to end the tenancy, I dismiss the portion of the landlords' application for monetary compensation, with leave to reapply.

Conclusion

The portion of the landlords' application for an order of possession for the rental unit is dismissed, without leave to reapply.

The portion of the landlords' application for monetary compensation 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* and is being mailed to both the applicants and the respondents.

Dated: September 4, 2014

Residential Tenancy Branch

