



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Barafield Realty Ltd c/o Gateway Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF, O

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession and a monetary order for unpaid rent or utilities, for a monetary order for late fees, loss of revenue, and liquidated damages, and to recover the filing fee from the tenant for the cost of the application.

An agent for the landlord company attended the hearing and gave affirmed testimony. However, despite being served with the Landlord Application for Dispute Resolution and notice of hearing documents by registered mail on November 28, 2014, no one for the tenant attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and the only participant who joined the call was the landlord's agent. The landlord's agent testified that the tenant was served on that date and in that manner and has provided a receipt from Canada Post bearing that date and a registered mail tracking number, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for late fees, loss of revenue, or liquidated damages?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on September 15, 2014 and expires on September 30, 2015, and the tenant still resides in the rental unit. Rent

in the amount of \$750.00 per month is payable in advance on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$375.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The landlord's agent further testified that the tenant is currently in arrears of rent the sum of \$1,550.00 for November and December, 2014. The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on November 3, 2014 by posting it to the door of the rental unit. He testified that the notice is dated November 3, 2014 for unpaid rent in the amount of \$1,550.00 that was due on December 1, 2014. However, the landlord has provided a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 3, 2014 with an expected date of vacancy of November 15, 2014 for unpaid rent and late fees totalling \$770.00 that was due on November 1, 2014. Only 1 page of the 2-page form has been provided.

The tenant has not paid any rent since the issuance of the notice, and the landlord has not been served with an application for dispute resolution by the tenant disputing the notice.

The landlord's agent also testified that the tenancy agreement provides for liquidated damages in the amount of \$250.00 and was permitted the opportunity to provide by facsimile a copy of the tenancy agreement after the hearing had concluded.

The landlord's agent also testified that he conducted an inspection of the rental unit on December 18, 2014 and the rental unit is a total disaster with garbage all over the floors. The landlord's agent does not believe that he will be able to re-rent the rental unit before the end of January, 2015 and requests an order for loss of revenue for one month's rent.

Analysis

I have reviewed the notice to end tenancy provided by the landlord, and it seems that the landlord's agent was confused about the notice issued, and has not satisfied me which notice was issued. Further, the landlord must serve both pages of the 2-page form and has only provided 1 page as evidence. Therefore, I cannot be satisfied that the landlord has complied with the *Act* by serving both pages, and therefore is not entitled to an Order of Possession.

If rent remains unpaid, the landlord is at liberty to serve the tenant with another notice to end the tenancy but must serve both pages and must provide both pages as evidence in a hearing. Further, a notice to end a tenancy states what rent was due and when.

That amount should not include late fees because late fees were not due on the date that rent was due.

With respect to the monetary claim, I have reviewed the tenancy agreement, and note that it indicates a parking fee and a remote fee in addition to the rent. The landlord's agent never made any mention with respect to those fees or if they are payable as a one time fee or monthly. Therefore, I dismiss the landlord's application for a monetary order with leave to reapply.

Conclusion

The landlord's application for an Order of Possession is hereby dismissed.

The landlord's applications for monetary orders are hereby 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 31, 2014

Residential Tenancy Branch

