



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

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent, utilities and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement 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;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing by conference call and gave testimony.

At the outset the tenant stated that she was not served with the notice of hearing package. The landlord confirmed this in his direct testimony stating that he was instructed not to serve the tenant as she did not file an application to dispute the 10 day Notice to End Tenancy issued for Unpaid Rent date February 20, 2015. After some discussions with both parties the tenant consented to speak to the landlord's application for dispute and that she was prepared to go ahead.

The landlord stated that he served the tenant with his documentary evidence in person on February 28, 2015. The tenant disputes this stating that no evidence has been received. The landlord stated that he filed an electronic copy of a video recording of the service on a USB. A review of the electronic file shows no electronic evidence filed for this application. The landlord clarified that it was submitted for a different application that was previously dismissed. The landlord was notified that as no evidence was filed for this application that the electronic evidence for the other file could not be relied upon.

Based upon the conflicted testimony of both parties and that the landlord has failed to provide sufficient evidence to satisfy me that the documentary evidence was personally served upon the tenant, I am not satisfied that the tenant was served with the documentary evidence as per section 88 of the Act. As such, the documentary evidence submitted by the landlord is excluded.

The hearing proceeded with both parties relying strictly on direct testimony.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent, utilities or compensation for damage or loss?

Is the landlord entitled to retain the security deposit?

Is the landlord entitled to recovery of the filing fee?

Background and Evidence

The landlord stated that he served the tenant with a 10 Day Notice to End Tenancy issued for Unpaid Rent (the 10 Day Notice), dated February 20, 2015 on February 19, 2015. The landlord claimed that the notice states that the tenant failed to pay rent of \$750.00 + \$750.00 that was due on January 1, 2015 and February 1, 2015. The landlord also stated that the notice displays an effective end of tenancy date of February 28, 2015.

The tenant disputed that she was not served with this 10 Day notice.

The landlord stated that he posted the 10 Day Notice to End Tenancy dated February 20, 2014 on February 19, 2015 to the rental unit door. The landlord stated that he has no proof of service.

The landlord stated that the tenant failed to pay rent of \$1,500.00 as noted on the 10 Day Notice. The tenant disputes this stating that there were no arrears.

Analysis

Both parties have provided conflicting testimony and the landlord was not able to provide sufficient evidence to support his claim that the tenant was served with the 10

Day Notice. I find on a balance of probabilities that the landlord has failed to provide sufficient evidence to satisfy me that the tenant was served with the 10 Day Notice dated February 20, 2015.

Conclusion

The landlord's application is dismissed.

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: April 9, 2015

Residential Tenancy Branch

