



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MNDC, FF

Introduction

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

- an Order of Possession for landlord's use of property, pursuant to section 55;
- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The two tenants did not attend this hearing, which lasted approximately 26 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord connected to the teleconference late at approximately 10:34 a.m. The landlord's brother, "witness IB," testified on behalf of the landlord regarding service, at this hearing.

The landlord testified that the tenants were personally served with the landlord's application for dispute resolution hearing package ("Application") on October 1, 2015. Witness IB confirmed that he witnessed this service. In accordance with section 89 of the *Act*, I find that both tenants were served with the landlord's Application on October 1, 2015.

The landlord testified that the tenants were served with the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated July 31, 2015 ("2 Month Notice"), on the same date by way of posting to the front and back doors of the rental unit and again personally on August 7, 2015. The landlord confirmed that no one witnessed these service attempts. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were deemed served with the 2 Month Notice on August 3, 2015, three days after its posting, and again on August 7, 2015 in person.

Issues to be Decided

Is the landlord entitled to an Order of Possession for landlord's use of property?

Is the landlord entitled to a monetary award for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Is the landlord entitled to recover the filing fee for this Application from the tenants?

Background and Evidence

While I have turned my mind to the 2 Month Notice, the only documentary evidence provided by the landlord for this hearing, and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings are set out below.

The landlord testified that he bought the rental unit, which is a house, on February 15, 2015 and took possession on February 16, 2015. The landlord stated that the tenants were already residing in the rental unit at that time and that he continued their tenancy. The landlord confirmed that he did not sign a written tenancy agreement with the tenants. The landlord confirmed that this tenancy is on a month-to-month basis and that rent of \$1,500.00 is payable on the first day of each month. The landlord confirmed that no security deposit was paid to him by the tenants. The landlord stated that he saw the tenants in the rental unit a few days before this hearing and that they continue to reside in the unit.

The landlord seeks an order of possession based on the 2 Month Notice, which has an effective date of October 1, 2015, for the following reason:

- *The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.*

The landlord stated that he was approved by the City to demolish the rental unit and build a new structure. The landlord stated that he received notice of this approval from the City on July 30, 2015. The landlord confirmed that he received letters from the City on October 17 and 29, 2015, indicating the steps to be taken before demolition could occur. The landlord stated that he has to first disconnect the water supply before the demolition permit could be issued. He stated that he was unable to disconnect the water supply because the tenants were still living in the rental unit. The landlord had the letters in front of him during the hearing but confirmed that he did not submit any copies for this hearing.

The landlord seeks a monetary order of \$5,000.00 from the tenants. He stated that the tenants failed to pay rent of \$1,500.00 for each of September, October and November 2015, totalling \$4,500.00. The landlord indicated that he has issued receipts to the tenants for previous rent paid but no attempts were made by them to pay rent for the above months. The landlord confirmed that he had not issued any notices to end tenancy for unpaid rent to the tenants.

The landlord also seeks \$500.00 for two days of missed work. The landlord indicated that he missed one day because he had to attend at a Residential Tenancy Branch office to file this Application against the tenants. The landlord confirmed that he missed the other day of work in order to have a discussion with the tenants regarding booking a moving truck, which was ultimately not booked, so that the tenants would vacate the rental unit.

Analysis

While I do not disbelieve the landlord's testimony at this hearing, oral evidence provided in the place of available documentary evidence is given less weight as it is inherently less reliable. This is especially the case where documentary evidence is available that could easily substantiate the landlord's case: the best evidence available should be provided. The landlord had sufficient time of over two months to prepare for this hearing, as he filed his Application on September 30, 2015. However, the landlord failed to submit any documentary evidence for this hearing, with the exception of the 2 Month Notice.

As per section 49(6)(a) of the *Act*, the landlord may only issue a 2 Month Notice for valid reasons, once permits and approvals are in place to demolish the unit. On a balance of probabilities and for the reasons stated below, I dismiss the landlord's Application for an order of possession based on the 2 Month Notice, dated July 31, 2015, without leave to reapply. The landlord's 2 Month Notice is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*. I find that the landlord failed to provide any documentary evidence for this hearing of the "necessary permits and approvals required by law to demolish the rental unit," despite the fact that he had this paperwork in front of him during the hearing. In his Application, the landlord indicated "my rezoning was approved by the city and I applied and paid for the demolition permit." However, the landlord failed to provide any documentary evidence of these facts.

I dismiss the landlord's Application for \$4,500.00 in unpaid rent with leave to reapply. I find that the landlord failed to provide proper notice to the tenants that he was seeking unpaid rent at this hearing. The landlord did not specifically apply for a monetary order for unpaid rent in his Application, despite the fact that this option is available. He applied for a general monetary order for damage and loss. The landlord did not provide any details in his application that rent was unpaid, the amounts sought for unpaid rent, or the amounts or months for which rent was unpaid. The landlord also failed to provide documentary evidence of the amount of rent or the fact that rent was unpaid.

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenants in violation of the *Act*, Regulation or tenancy agreement;

3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I dismiss the landlord's application for \$500.00 in lost work wages, without leave to reapply. I find that the landlord failed to provide documentary evidence of lost work wages, failing part three of the above test. Further, the landlord is not entitled to recover lost work wages for filing Application-related documents, as the only hearing-related fees that are recoverable under the *Act* are for filing fees.

As the landlord was unsuccessful in this Application, I find that he is not entitled to recover the \$50.00 filing fee.

Conclusion

The landlord's application for a monetary award for \$4,500.00 in unpaid rent is dismissed with leave to reapply.

The remainder of the landlord's application is dismissed without leave to reapply.

The landlord's 2 Month Notice, dated July 31, 2015, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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 01, 2015

Residential Tenancy Branch

