



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This review hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

The Landlord states that he was not served with any documents from the Tenant. The Landlord states that he was informed of this hearing by and provided the review consideration decision dated October 26, 2015 from the Residential Tenancy Branch. The Landlord states that no evidence was received from the Tenant. The Landlord states that as a result no further evidence to support the Landlord's claims was provided. The Tenant states that it received the review consideration decision on October 28, 2015 and provided the Landlord with copies of the evidence submitted on for the review application along with the notice of review hearing on or about October 30, 2015. The Tenant states that this package was given in person to the Landlord's manager. The Landlord confirms that this manager still works for him and states that nothing was given to the Landlord or his agent.

Although the Landlord denies receiving the evidence from the Tenant I find the Tenant's evidence of service to the manager to be convincing. I note that the Landlord did receive the review consideration decision that sets out the details of the Tenant's rent payments for August and September 2015, the evidence of which led to today's review hearing. Even if the Landlord did not directly receive the Tenant's package I accept that the Tenant gave the package to the Landlord's agent, that the Landlord has sufficient knowledge of the issues to be addressed today, that this hearing may proceed and that I may consider the Tenant's evidence provided for the review application.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an order of possession?

Background and Evidence

The tenancy started on July 1, 2015. Rent of \$775.00 is payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$387.50 as a security deposit.

The Landlord states that the Tenant paid rent for August 2015 a little bit at a time and that on August 11, 2015 the Tenant still owed \$125.00 so the Landlord served a 10 day notice to end tenancy. The Landlord provided a copy of the Notice that sets out \$775.00 owed. The Landlord states that October 2015 rent has not been paid.

The Tenant states that full rent was paid for August and September 2015. The Tenant provided receipts from the Landlord's manager for these payments. The receipts indicate that rent was paid on the first of each of those months. The Tenant submits that the Landlord did not serve the Tenant with any notice of wanting to end the tenancy.

Analysis

Section 46 of the Act provides 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. Overall I find the Landlord's evidence to be insufficient given the Tenant's evidence of rental payment which I find to be compelling and determinative of the matter. Further, regardless of whether the Notice was served, which I tend to accept, the Notice itself is defective in that it sets out a larger amount to be paid within the 5 allowable days than was owed according to the Landlord's own evidence. As a result I find that the Landlord did not issue a valid notice to end tenancy and I dismiss the claim for an order of possession. Given the rental receipts I find that the Landlord has not substantiated unpaid rent for August and September 2015 and I dismiss this claim. The Landlord's claim for unpaid October 2015 rent is dismissed with leave to reapply. The Landlord is not entitled to recovery of the filing fee.

Conclusion

The claims for an order of possession, monetary order for unpaid rent for August and September 2015 and recovery of the filing fee are 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: December 04, 2015

Residential Tenancy Branch

