



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The tenant acknowledged receipt of evidence submitted by the landlord. The tenant did not submit any documentation for this hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent and loss of income?

Background and Evidence

The landlords' agent gave the following testimony:

The agent stated that the tenants were given the keys to the suite on March 27, 2016. Rent in the amount of \$650.00 is payable in advance on the 29th day of each month. The landlord issued a notice to end tenancy for unpaid rent on March 28th, 2016. The landlords agent stated that he acknowledges that he issued the notice too early but stated he waited one extra day to file for dispute resolution to make up for it.

The tenant gave the following testimony:

The tenant stated that the day after they moved in, the landlord offered them \$500.00 if they would move out by March 29th. The tenant stated that she declined. The tenant stated that they were served with a notice on the 28th when the rent wasn't even due yet. The tenant stated that she became concerned when the landlord advised her that she could only pay in cash. The tenant stated that she felt there was something "shady" about this landlord and wanted to pay in form that would leave a paper trail, but the landlord refused. The tenant stated that she has

made several attempts to pay the landlord in a form that's traceable and is still willing to do so. The tenant stated that the notice should be set aside as it was given "too early".

Analysis

Section 46 of the Act addresses this issue before me as follows:

Landlord's notice: non-payment of rent

- 46 (1) 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.

In the landlords agent's own testimony he acknowledged that he issued the notice before the rent was even due. I find that the landlord issued the notice to end tenancy prematurely and therefore the notice is not valid. The notice is hereby set aside. It is of no effect or force. Given the above, the landlord will need to re-serve a 10 Day Notice to End Tenancy for Unpaid Rent if necessary. The landlords request for an order of possession is dismissed. The landlords request for a monetary order is dismissed with leave to reapply.

Conclusion

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 28, 2016 is set aside. The tenancy continues on the original terms and conditions.

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 21, 2016

Residential Tenancy Branch

