



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, MNDC, FF

Introduction

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

- an order of possession for cause pursuant to section 55;
- a monetary order for unpaid rent or utilities and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord provided undisputed affirmed testimony that the tenant was served with the notice of hearing package and the submitted documentary evidence by posting it to the rental unit door on June 9, 2016. The tenant confirmed receipt of the notice of hearing package. The tenant did not submit any documentary evidence. I accept the undisputed affirmed evidence of both parties and find that the tenant was deemed served on June 12, 2016 as per section 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for cause?

Is the landlord entitled to a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss and for recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord seeks an order of possession as a result of a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) dated May 20, 2016 and a monetary order for unpaid rent of \$650.00.

The landlord provided affirmed testimony that the tenant was served twice with the 1 Month Notice dated May 20, 2016 in person on May 20, 2016 and again in person on May 21, 2016. The 1 Month Notice displays an effective end of tenancy date of July 1, 2016 and sets out 3 reasons for cause selected by the landlord as:

Tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord.
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
- put the landlord's property at significant risk.

The landlord clarified that the first copy provided to the tenant was torn by the tenant. The landlord stated that a second copy was provided in person to the tenant on May 21, 2016.

The tenant disputed the landlord's claim that she was never served with a copy of the 1 Month Notice dated May 20, 2016.

The landlord stated that she was unable to provide any supporting evidence to confirm the service of the 1 Month Notice.

The landlord also seeks recovery of \$650.00 for the unpaid rent for June 2016. The landlord claims that the tenant failed to pay rent for June 2016.

The tenant disputes the landlord's claim stating that rent for June was paid as it comes from the ministry.

During the hearing the tenant stated that she was in the process of looking for another place to rent so that she could move. The tenant stated that as of the date of this hearing the rent for July 2016 was not paid because the landlord had refused to accept the rent payment.

The landlord disputed the tenant's claim of refusing the rent and that she has not seen the tenant since June 9, 2016.

Analysis

The onus or burden of proof lies with the party who is making the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. In this case the landlord has claimed that the tenant was served with the 1 Month Notice in person on May 20th and again on May 21st and the tenant has disputed that the landlord has not served her with the 1 Month Notice on May 20th or May 21st. On this basis without any supporting evidence of service from the landlord, I find on a balance of probabilities that the landlord has failed to provide sufficient evidence to satisfy me that the tenant was properly served with the 1 Month Notice dated May 20, 2016. As such, the landlord's application for an order of possession is dismissed with leave to reapply based upon the 1 Month Notice dated May 20, 2016. Leave to reapply is not an extension or any applicable time period.

The landlord has also claimed that the tenant failed to pay rent of \$650.00 for June 2016. The tenant has disputed this claim stating that rent for June was paid. The landlord provided testimony that she did not serve the tenant with a 10 Day Notice for Unpaid Rent nor has she provided a tenant ledger. I find on a balance of probabilities that the landlord has failed to provide sufficient evidence to satisfy me that the tenant failed to pay rent of \$650.00 for June rent.

Conclusion

The landlord's application for an order of possession is dismissed with leave to reapply. The landlord's monetary claim 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: July 05, 2016

Residential Tenancy Branch