



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes 55, 67

Introduction

This was an application by the landlord for an order of possession and a monetary order based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice").

Both the landlord and the tenant attended the hearing, which lasted approximately 40 minutes. The hearing process was explained and the participants were asked at both the beginning and the end if they had any questions. The participants were given a full opportunity to be heard, to present their affirmed testimony and documentary evidence, to make submissions, and to respond to the submissions of the other party.

At the outset of the hearing, the landlord testified that he had served the tenant personally with the Notice on November 2, 2016 by handing it to her. The Proof of Service document submitted in evidence had his wife's name, but not her signature, on it. As her signature was missing, she was called as a witness, and gave affirmed evidence that she had witnessed the tenant's having been served with the Notice on November 2, 2016. Although the landlord's wife testified that she took notes about this in her iphone, those notes were not in evidence. The landlord's wife also testified that service occurred at about 7:00 p.m. but subsequently said that service occurred at about 4:00 or 5:00 p.m. The landlord's Proof of Service document records service as having occurred at 3:00 p.m.

The tenant denied having received the Notice by hand from the landlord and said that she had received an unsigned Notice in her mail box on November 2, 2016. She faxed me this Notice at my request after the hearing. The Notice faxed to me by the tenant, which was not in the package of evidence received from the landlord, was not signed by the landlord and indicated that service had been by mailbox. At the hearing the tenant also advised that she had not received a copy of the landlord's Proof of Service document from the landlord in the package of materials received from the landlord with the Notice of Hearing. Based on these inconsistencies, I cannot find that the tenant was served with a valid Notice. I find instead that she was served with an unsigned Notice.

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The tenancy agreement shows a month to month tenancy with a start date of December 1, 2006 and rent of \$1,600.00 due on the first of each month. Both landlord and tenant advised that there had originally been two tenants and that the entire home had been rented, but that at some point one of the tenants moved out. After this point, the remaining tenant occupied only the upper two floors her rent was lowered to \$1,000 per month. Although both the signed and the unsigned versions of the Notice indicate a monthly rent of \$1,200.00, I have amended this amount to \$1,000.00 pursuant to s. 68 of the Act based on the testimony of both the landlord and the tenant. A security deposit of \$800.00 was paid at the start of the tenancy.

Both parties agreed that the \$200.00 of October's rent and \$300.00 of November's rent remained outstanding. The tenant testified that she called the landlord on November 8, 2016 and told him she had the remaining money for him. The landlord agreed that she had called on November 8 but testified that she said only that she wanted to discuss things and did not say she had the money available. The tenant also testified that she withheld rent in both October and November because she felt she was owed for work that she or her family members had done. Her son had cleaned the gutters and she had cleaned up some branches after a storm that the landlord had not attended to.

Analysis

Section 46 of the Act allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due. This requires the landlord to give the tenant a 10 Day Notice. Under the Act, the 10 Day Notice must comply with s. 52. Section 52 requires that the Notice be in writing and signed and dated by the appropriate party. It also requires that the Notice state the address of the rental unit, the effective date, the grounds for ending the tenancy, and that the Notice be in the approved form.

As set out above, the Notice received by the tenant via her mailbox was not signed by the landlord. Additionally, it is not clear to me that the tenant received the signed version of the Notice by hand. As the landlord has not established that the tenant was served with a valid Notice, I cannot grant either an order of possession or a monetary order.

As set out above, the tenant testified that the landlord had not always insisted that rent be paid on time. Regardless of whether or not this has been the case in the past, the landlord now appears to be unwilling to accept late rent. The tenant should be aware that rent is due on the 1st of the month and that the landlord may make another application for an order of possession and a monetary order at any time the rent has not been paid by the date it is due.

The tenant should also be aware that rent may not be withheld based on services rendered by the tenant. Any arrangement between the landlord and the tenant with respect to services rendered should be treated separately from the tenant's obligation to pay rent when it falls due.

Conclusion

The landlord's application is dismissed, with leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*. Pursuant to s. 77 of the *Act*, a decision or an order is final and binding, except as otherwise provided in the *Act*.

Dated: November 29, 2016

Residential Tenancy Branch