



Dispute Resolution Services

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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 pursuant to the *Residential Tenancy Act* for an order of possession and for a monetary order for unpaid rent and the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to an order of possession and a monetary order for unpaid rent?

Background and Evidence

The tenancy started in November 2016. The monthly rent is \$1,350.00 due in advance on the first of each month. The landlord did not provide a copy of the tenancy agreement and could not recall details of the tenancy. The details were supplied by the tenant.

The landlord has applied for an order of possession pursuant to a ten day notice to end tenancy for non-payment of rent. The landlord could not recall how much rent was owed and had not filed a copy of the notice to end tenancy into evidence. The tenant denied owing the amount stated in the application. Both parties agreed that the notice to end tenancy was dated February 01, 2017 but could not agree on the date it was served on the tenant.

Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove 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 the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

Section 52 of the *Residential Tenancy Act* states that in order to be effective, a notice to end a tenancy must be in writing and when given by a landlord to a tenant, must be in the approved form.

Section 46 of the *Act* provides that a landlord may issue a notice to end tenancy for unpaid rent on a day after the rent is due.

In this case, in the absence of a copy of the notice to end tenancy before me, I am unable to determine whether the notice was served in the proper format and whether the notice is valid. However, since both parties agreed that rent is due on the first of each month and that the notice to end tenancy is dated February 01, 2017, I find that the landlord served the notice to end tenancy prior to the earliest date he could serve the notice which was February 02, 2017.

Accordingly, the notice is set aside. Since the landlord has not proven his case he must bear the cost of filing his application.

Conclusion

The landlord's 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: March 21, 2017

Residential Tenancy Branch