



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Weidner Investments
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This 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. A Monetary Order for compensation - Section 67; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant did not attend the hearing. I accept the Landlord's evidence that the Tenant was served with the application for dispute resolution and notice of hearing (the “Materials”) by registered mail in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. I find therefore that the Tenant is deemed to have received the Materials. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy effective for ending the tenancy?

Background and Evidence

The tenancy started on September 1, 2016 on a fixed term to end on August 31, 2017. Rent of \$995.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$675.00 as a security deposit. On March 3, 2017 the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent (the “Notice”). It is noted that the Notice, on form #RTB-30 (2009/04), is no longer in use as an approved form.

Analysis

Section 52 of the Act provides that in order to be effective, a notice to end tenancy, must, inter alia, when given by a landlord be in the approved form. As the Notice is an old notice and not in a current approved form I find that the Notice is not effective for ending the tenancy and I dismiss the application. The Landlord remains at liberty to serve an effective Notice and make another application pursuant to that Notice.

Section 19 of the Act provides as follows:

- (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.
- (2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

Based on the Landlord's evidence that an amount greater than ½ of the rent was collected for a security deposit I find that the Tenant may deduct the overpaid amount of \$177.50 from rent owed or payable.

Conclusion

The application is dismissed. The Tenant may deduct \$177.50 from rent owed or payable.

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 27, 2017

Residential Tenancy Branch

