



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MND MNDC MNR MNSD OPL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for: an Order of Possession for Landlord's Use pursuant to section 55; a monetary order for unpaid rent, damage or loss as well as utilities pursuant to section 67; authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 11:11 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions.

Preliminary Issue: Proof of Service of Notice to End Tenancy

This tenancy began on March 1, 2017. The landlord testified that the tenant has not paid rent or utilities but continues to live in the unit. The landlord testified that, on April 28, 2017, he issued a 2 Month Notice to the tenant advising the tenant that his parents are going to move in to the basement. The landlord testified that the tenants continue to reside in the rental unit.

The landlord testified that he issued a 2 Month Notice to End Tenancy for Landlord's Use ("2 Month Notice"). The landlord did not submit a copy of the 2 Month Notice. Section 68 of the Residential Tenancy Act discusses the requirements for a Notice to End Tenancy within the Dispute Resolution Hearing process,

- 68** (1) If a notice to end a tenancy does not comply with section 52 [*form and content of notice to end tenancy*], the director may amend the notice if satisfied that

- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
- (b) in the circumstances, it is reasonable to amend the notice.

(2) Without limiting section 62 (3) [*director's authority respecting dispute resolution proceedings*], the director may, in accordance with this Act,

- (a) order that a tenancy ends on a date other than the effective date shown on the notice to end the tenancy, or
- (b) set aside or amend a notice given under this Act that does not comply with the Act.

In this case, the landlord has did not supply a copy of the Notice to End Tenancy. Therefore, I have insufficient evidence to show; that the tenant was served with a copy of this Notice to End Tenancy; or that the Notice to End Tenancy complies with section 52 of the Act. Given that the tenant did not attend this hearing and the landlord offered insufficient documentary evidence with respect to the Notice to End Tenancy, service of the Notice to End Tenancy as well as service of the Application for Dispute Resolution which would ensure the respondent tenant was informed of the nature and time of this hearing, I find that the landlord cannot proceed with his application for an Order of Possession.

Generally, pursuant to section 55, I am obliged to issue an Order of Possession when the tenant does not attend to dispute a Notice to End Tenancy. One requirement of those provisions is that the landlord's Notice to End Tenancy must meet the standards for form and content as required by section 52 of the Act.

In this case, the landlord has not merely omitted or described in error a date on the notice or misspelled a name: the landlord has failed to provide the notice to end the tenancy that would provide some evidence of both service and the reason for the end of the tenancy. Nor has the landlord merely failed to provide evidentiary detail that can be further explored at the hearing: the landlord did not submit a copy of the residential tenancy agreement related to this matter or any evidence that has recorded the tenant's payments to the landlord.

In this case, I find that the landlord's omission (failure to submit the Notice to End Tenancy) is too great and the consequences too severe to allow the landlord's application. In the circumstances, I dismiss the landlord's application for an order of possession and his application for a monetary order including unpaid rent or utilities.

As the landlord has not been successful, I find that the landlord is not entitled to recover the filing fee for this application.

Conclusion

I dismiss the landlord's application in its entirety with leave to reapply.
Timelines will remain in effect.

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 14, 2017

Residential Tenancy Branch