



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein the Landlord sought an Order of Possession and a Monetary Order based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice").

The hearing was conducted by teleconference on August 22, 2017. Both parties called into the hearing and were given an opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

Neither party submitted any documentary evidence.

Preliminary Matter

The Tenant, J.L., confirmed that the Landlord had incorrectly spelled her name on the Application for Dispute Resolution. Pursuant to section 64(3)(c) I amend the Landlord's Application to correct the spelling of J.L.'s last name.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to monetary compensation from the Tenants?

Background and Evidence

The Landlord testified that the tenancy began May 1, 2017. She stated that monthly rent was payable in the amount of \$1,300.00 payable on the 30th of the preceding month or the 1st of the applicable month.

The Landlord's son stated that there is a written tenancy agreement, although it was not filed in evidence. The Landlord's son confirmed that the tenancy agreement does not specify what day of the month rent is payable.

The Landlord's son also stated that the Tenants only paid the security deposit and the first month of rent (May) following which the Tenants have not paid any rent.

The Landlord's son testified that the Notice did not indicate the amount of rent owing as the Landlord was not sure if she should include the amount owing at the time the Notice was issued or the date of the hearing.

The Tenants submitted that they paid the rent in cash and the Landlord failed to issue receipts.

Analysis

Rule 7.18 of the *Residential Tenancy Branch Rules of Procedure* provides that the applicant bears the burden of proving their claim on a balance of probabilities; in this case, the Landlord bears the burden of proving the Notice and the grounds for ending the tenancy.

As noted, neither party submitted any evidence in support of their position. The tenancy agreement and Notice were not before me, although the Landlord's son gave testimony as to their contents.

Section 46 of the *Act* provides that a Tenant has five days from service of the Notice in which to pay the outstanding rent or apply for dispute resolution. The outstanding rent is to be written on the Notice such that the Tenants are aware the amount they must pay within this strict timeline; in this case, and based on the testimony of the Landlord's son, no amount was noted as being outstanding such that the Tenants were not obligated to pay any amount.

I find that the Notice is invalid. The Landlord's Application for an Order of Possession and a Monetary Order is dismissed with leave to reapply. The tenancy shall continue until ended in accordance with the *Act*.

The parties were cautioned, should they attend any further hearings before the Residential Tenancy Branch, to ensure they provide evidence in support of their positions (including the tenancy agreement, proof of any rent payments, and Notices) in accordance with the *Residential Tenancy Branch Rules of Procedure*.

Conclusion

The testimony of the Landlord's son was that the Notice did not indicate the amount of rent owing such that the Tenants were not obligated to pay a specific amount within five days of service of the Notice. Further, the tenancy agreement did not indicate when the monthly rent payment was to be made.

The Landlord's Application for an Order of Possession and Monetary Order based on the Notice is dismissed with leave to reapply.

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: August 22, 2017

Residential Tenancy Branch