



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kingma Pacific Developments Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. A participatory hearing was held on January 8, 2017. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities; and,
- a monetary order for unpaid rent or utilities.

The Landlord attended the hearing and provided affirmed testimony. The Tenant did not attend the hearing. The Landlord testified that he personally served the application package, along with his supporting evidence to the tenant on October 21, 2017. I find the Tenant received the package on this day.

The Landlord has requested to amend his application to include rent that has accrued since the original application date. I turn to the following Rules of Procedure (4.2):

Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

Further, the Landlord requested to amend his application to allow him to retain the security deposit to offset rent owed. In consideration of these requests, I hereby amend his application accordingly.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38?
4. Is the landlord entitled to recover the filing fee from the tenant for the cost of this application?

Background, Evidence and Analysis

The Landlord testified that rent in the amount of \$1,850.00 is due on the first of the month. The Landlord stated that he holds a security and pet deposit totalling \$1,850.00.

The Landlord stated that the Tenant has failed to pay rent for the last 4 months (October 2017 – January of 2018.) The Landlord provided a copy of the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice), which he stated was hand delivered to the tenant on October 4, 2017. The 10 day Notice specified that the tenant owed \$1,850.00 in rent at that time.

After further reviewing the 10 Day Notice provided into evidence, I note that it is missing the effective date (the date the Tenant must vacate the rental unit).

Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, **state the effective date of the notice**, state the grounds for ending the tenancy, and be in the approved form.

In this case, I note that the Landlord did not put an effective date on the Notice. As such, I do not find it meets the form and content requirements set forth under section 52 of the *Act*.

In light of the above, I dismiss the Landlords application in full, as the 10 Day Notice is central to his claims at this hearing. Accordingly, the tenancy continues at this time and until such time it legally ends. The Landlord is at liberty to issue another 10 Day Notice if there is still unpaid rent. However, the 10 Day Notice issued in October of 2017, is cancelled and has no force and effect, given it does not comply with section 52 of the Act.

Conclusion

The Notice issued on October 4, 2017 has been cancelled and the tenancy continues at this time.

The landlord is at liberty to re-issue a notice to end tenancy if the landlord so choses.

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: January 08, 2018

Residential Tenancy Branch