



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, OPM, OPN, OPR, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for an Order of Possession based on a mutual agreement to end the tenancy, an Order of Possession based on the Tenants’ notice to end the tenancy, an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”), monetary compensation for unpaid rent, and for the recovery of the filing fee paid for this application.

The Landlord and both Tenants were present for the teleconference hearing, however only one of the Tenants participated in the hearing. The Tenant confirmed that she received the Notice of Dispute Resolution Proceeding package and a copy of the Landlord’s evidence package after the Landlord posted the documents on her door. The Landlord confirmed that the Tenants served him in person with copies of their evidence.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

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.

Preliminary Matters

The Landlord initially applied for an Order of Possession through a mutual agreement to end the tenancy, the Tenants' notice to end the tenancy, and on a 10 Day Notice. However, he clarified during the hearing that he applied for an Order of Possession on three grounds in error. The Landlord confirmed that he was applying for an Order of Possession based on a 10 Day Notice only.

Therefore, in accordance with Section 64(3)(c), the Application for Dispute Resolution was amended to remove the claims for an Order of Possession based on a mutual agreement to end the tenancy, and an Order of Possession based on the Tenants' notice to end the tenancy.

As the Landlord posted the Notice of Dispute Resolution Proceeding on the Tenants' door, I find this was not in compliance with Section 89(1) of the *Act*. An Application for Dispute Resolution cannot be served by posting on the door unless it is for an Order of Possession only, as stated in Section 89(2) of the *Act*. Therefore, I find that the Landlord's monetary claim cannot be considered due to a service issue, and is dismissed with leave to reapply.

This decision will address the request for an Order of Possession based on the 10 Day Notice, as well as the Landlord's request for the recovery of the filing fee.

Issues to be Decided

Is the Landlord entitled to an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began in September 2014. The original tenancy agreement was signed with two different tenants, which was in place when the current Tenants moved in. There is no written tenancy agreement between the Landlord and two Tenants named on this dispute.

Monthly rent is \$866.00, due on the first day of each month, and a security deposit of \$400.00 was paid at the outset of the tenancy.

The Landlord testified that a 10 Day Notice, dated September 5, 2018, was served to the Tenants on September 6, 2018. He attempted to serve the notice in person, but as the Tenants did not take the notice, he posted it on their door. The Tenant confirmed receipt of the 10 Day Notice on September 6, 2018.

The 10 Day Notice was submitted into evidence and states that an amount of \$433.00 was not paid as due on September 1, 2018. The Landlord stated that he had received half of the rent for September 2018, but half was still owing. He testified that later in September the Tenant offered him the money for the remainder of the rent, but he did not accept it due to the upcoming dispute resolution hearing.

The Landlord also stated that he is still owed rent for October 2018. He received a cheque for half of the monthly rent amount, but did not cash it, again due to the upcoming hearing.

The Tenant stated that she phoned the Landlord on September 11, 2018 to talk about the rent owing, but was unable to reach him. On September 13, 2018, the Tenant saw the Landlord in person and tried to give him cash for the rent owing, but he would not accept it. She also stated that the Landlord would not take cash for October 2018 rent.

The Landlord submitted only the first page of the 10 Day Notice into evidence and the Tenant stated that she only received one page of the notice. When asked to clarify, the Landlord stated that he always provides tenants with both pages of the 10 Day Notice. However, he was unable to confirm that both pages had been served to the Tenants.

Analysis

I refer to Section 52(3) of the *Act* which states that in order to be effective, a notice to end tenancy given by a landlord must be in the approved form. The approved form for a 10 Day Notice is two-pages. By only serving the Tenants with one page of the 10 Day Notice, I find that the full 10 Day Notice was not served. I also note that page one of the 10 Day Notice states that both pages must be given to the tenant.

The Landlord provided testimony that he always serves both pages of the 10 Day Notice to tenants. However, as I only have one page before me that the Landlord

submitted into evidence, and the Tenant testified that she only received the first page of the notice, I am not satisfied that both pages of the 10 Day Notice were served as required.

The second page of the 10 Day Notice outlines important information to the tenants, such as the time provided in which to dispute the notice or pay the rent owing. Section 46(4) of the *Act* outlines that a tenant has 5 days in which to dispute the notice or pay the rent owing. However, a tenant may not be aware of this without the information on the second page of the 10 Day Notice.

Section 55(2)(b) of the *Act* states that a landlord may request an Order of Possession if the following applies:

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;

However, as the 10 Day Notice does not comply with Section 52 of the *Act*, I find that Section 55(2)(b) also does not apply. Therefore, I cannot grant the Landlord an Order of Possession. The Landlord's application for an Order of Possession is dismissed, without leave to reapply.

I also provide caution to both parties regarding the payment of rent. A tenant must pay rent when it is due in accordance with Section 26(1) of the *Act*. A landlord must not interfere with the payment of rent, regardless of whether a dispute resolution proceeding is in process.

As the Landlord was not successful with the Application for Dispute Resolution, I decline to award the recovery of the filing fee.

Conclusion

The Application for Dispute Resolution is dismissed, without leave to reapply. The 10 Day Notice, dated September 5, 2018, is of no force and effect. This tenancy continues until ended in accordance with the *Act*.

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: October 26, 2018

Residential Tenancy Branch