



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNDCL-S, MNRL-S, OPR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on October 17, 2018 (the “Application”). The Landlord applied for an Order of Possession based on 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”). The Landlord also sought compensation for monetary loss or other money owed, to recover unpaid rent and reimbursement for the filing fee. The Landlord sought to keep the security deposit to offset the monies owed.

The Landlord appeared at the hearing. Nobody appeared for the Tenant. I explained the hearing process to the Landlord who did not have questions about the process when asked. The Landlord provided affirmed testimony.

The Landlord had submitted evidence prior to the hearing. The Tenant had not submitted evidence. I addressed service of the hearing package and Landlord’s evidence.

The Landlord testified that he posted the hearing package on the door of the rental unit on October 17, 2018. The Landlord submitted a photo showing this. The Landlord confirmed this is the only way he served the Tenant with the hearing package. The Landlord said he did not serve his evidence on the Tenant.

Section 89 of the *Residential Tenancy Act* (the “*Act*”) sets out the methods of service permitted for applications for dispute resolution and states:

Special rules for certain documents

89 (1) An application for dispute resolution...when required to be given to one party by another, must be given in one of the following ways:

(a) by leaving a copy with the person;

...

(c) by sending a copy by registered mail to the address at which the person resides...

(d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;

(e) as ordered by the director under section 71 (1)...

(2) An application by a landlord under section 55...must be given to the tenant in one of the following ways:

(a) by leaving a copy with the tenant;

(b) by sending a copy by registered mail to the address at which the tenant resides;

(c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;

(d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;

(e) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents].

...

Given the testimony of the Landlord in relation to the method of service used for the hearing package, I cannot find that the Tenant was served in accordance with section 89(1) of the *Act*. Given this, I am unable to consider the Landlord's request for compensation for monetary loss or other money owed, to recover unpaid rent and to keep the security deposit to offset the monies owed. These claims are dismissed with leave to re-apply. This does not extend any time limits set out in the *Act*.

Based on the undisputed testimony of the Landlord, and photo submitted, I find the Tenant was served with the hearing package in accordance with sections 59(3) and 89(2)(d) of the *Act*.

The Landlord acknowledged that he did not serve the Tenant with his evidence as required under rule 3.14 of the Rules of Procedure. I find it would be unfair to admit the evidence when it was not served on the Tenant and the Tenant did not attend the hearing to address admission of the evidence. The evidence is excluded.

I did consider the Notice as the Tenant would have been aware of this regardless of service of it as evidence on this hearing.

As I was satisfied of service of the hearing package, I proceeded with the hearing in the absence of the Tenant. The Landlord was given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered the Notice and oral testimony of the Landlord. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?
2. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

The Landlord testified as follows in relation to a tenancy agreement. He purchased the property October 1, 2017. The Tenant was already a tenant in the rental unit at the time. The previous owners advised him that there was no written tenancy agreement, only a verbal tenancy agreement. It was understood that he took over the tenancy agreement from the previous owners and became the landlord. He was advised that the tenancy started approximately a year and a half before he purchased the property. The tenancy is a month-to-month tenancy. Rent is \$900.00 per month due on the first of each month.

The Notice was submitted as evidence. It states that the Tenant failed to pay \$1,900.00 in rent due October 1, 2018. It is addressed to the Tenant and relates to the rental unit. It is signed by the Landlord. It has an effective date of October 15, 2018. The Notice is not dated.

The Landlord testified that the Notice was sent to the Tenant at the rental unit by registered mail on October 4, 2018. The Landlord provided Tracking Number 1 as noted on the front page of this decision. With permission, I looked this up on the Canada Post website which shows the package was delivered and signed for October 12, 2018.

Analysis

Section 46 of the *Act* allows a landlord to end a tenancy where a tenant has failed to pay rent. The relevant portions of section 46 state:

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52...

...

[emphasis added]

Section 52 of the *Act* states:

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

[emphasis added]

Section 68(1) of the *Act* allows an arbitrator to amend a notice to end tenancy that does not comply with section 52 of the *Act* if the recipient knew, or should have known, the information that was omitted and it is reasonable to amend the notice in the circumstances.

Here, the Notice does not include a date either in the “date signed” box or the box for the date the Notice was served. The date is a specific requirement under section 52 of the *Act*.

The Tenant did not appear to confirm that she knew the date the Notice was issued or to comment on amending the Notice. I do not find it appropriate to amend the Notice in the absence of the Tenant to confirm she knew the date the Notice was issued or to confirm that the omission did not prejudice her.

Given the Notice does not comply with section 52 of the *Act*, I find it is not an effective notice to end tenancy and I decline to issue an Order of Possession based on it.

Given the Landlord was not successful in this application, I decline to award him reimbursement for the \$100.00 filing fee.

Conclusion

The Landlord's requests for compensation for monetary loss or other money owed, to recover unpaid rent and to keep the security deposit to offset the monies owed are dismissed with leave to re-apply. This does not extend any time limits set out in the *Act*.

The Landlord's request for an Order of Possession based on the Notice is dismissed without leave to re-apply.

I decline to award the Landlord reimbursement for the \$100.00 filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: November 26, 2018

Residential Tenancy Branch