



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for unpaid rent pursuant to section 55; and
- recovery of the filing fee for this application from the tenant pursuant to section 72.

The tenant and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. During the hearing, the landlord mostly relied on a translator but did provide some direct testimony as well.

The tenant and the tenant's witness confirmed receipt of the landlord's application therefore I find that he was duly served with these documents in accordance with sections 89 of the *Act*. At the outset of the hearing, each party confirmed that they did not serve the other party with their respective evidence packages. As such, I have not relied on the documentary evidence. Instead I have relied on the oral testimony of the parties to form the basis of my decision.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Background and Evidence

As per the testimony of the parties, the tenancy began approximately 10 years ago. Rent in the amount of \$2,000.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$1,000.00 at the start of the tenancy, which the landlord still retains in trust.

The landlord testified that her son and daughter-in-law personally served the 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") on September 17, 2018 at the rental unit. The landlord presented her daughter in-law as a witness. The witness testified that she attended the unit and observed her husband serve the 10 Day Notice to the tenant at the back door of the unit.

In reply, the tenant testified that he did not receive the 10 Day Notice on September 17, 2018 or any other date for that matter. The tenant testified that he was not at the rental unit on this date as he was camping. In regards to unpaid rent, the tenant testified that the parties had an agreement by which he could withhold rent until repairs were completed to the unit.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent or utilities the tenant may, within five days, pay the overdue rent or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does not pay the overdue rent or file an application, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and must move out of the rental unit.

In the absence of evidence to corroborate the tenant's claim that he was camping, I am satisfied beyond a reasonable doubt that the 10 Day Notice was personally served to the tenant on September 17, 2018 as claimed by the landlord and landlord's witness.

Section 52 of the *Act* provides that in order to be effective, a notice to end tenancy from a landlord must be in writing and 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.

Although the 10 Day Notice forms part of the landlord's evidence package, I find the tenant had a copy from the September 17, 2018 serving and my reliance on it does not prejudice the tenant. Upon review of this notice before me, I find that the tenant was not served with an effective notice as the landlord failed to indicate the effective date. For this reason I find that the landlord is not entitled to an order of possession and dismiss the landlord's application without leave to reapply.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for the application.

Conclusion

The tenancy will continue until it is ended in accordance with the *Act*.

The landlord's entire application is dismissed without 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: November 29, 2018

Residential Tenancy Branch