



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL MNRL-S OPR

Introduction

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

- an Order of Possession for unpaid rent pursuant to section 55;
- a Monetary Order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 10 minutes. The landlord appeared and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that they served their application for dispute resolution dated December 13, 2018 and evidentiary materials on the tenant by registered mail sent on January 3, 2019. The landlord provided a Canada Post tracking number as evidence of service. Based on the evidence I find that the tenant was deemed served with the landlord's package on January 8, 2019, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award as claimed?

Is the landlord entitled to recover the filing fee for their application from the tenant?

Background and Evidence

The landlord provided the following evidence. This periodic tenancy began in October, 2018. The monthly rent is \$2,300.00 payable on the first of each month. A security deposit of \$1,150.00 was collected at the start of the tenancy and is still held by the landlord. The landlord testified that the tenant has not paid rent since November, 2018.

The documentary evidence submitted by the landlord consists of text messages with the tenant, some invoices for plumbing work and copies of the landlord's bank statements. The landlord did not submit a copy of a tenancy agreement signed by the parties or any Notices to End Tenancy.

Analysis

In accordance with Rule of Procedure 6.6, the evidentiary onus is on the applicant to show on a balance of probabilities the basis for their claim. In the present case the landlord has failed to submit a valid tenancy agreement or any Notices to End Tenancy served on the tenant.

I find that the landlord has not met their evidentiary burden. I am not satisfied based on the testimonial evidence that there is a tenancy agreement in place, the details of any agreement, that the tenant breached any agreement by failing to make payment, or that the landlord issued a valid Notice to End Tenancy. The documentary materials submitted by the landlord is insufficient to establish that there is a tenancy agreement requiring the tenant to pay rent and that the tenant has failed to make payments as required. I find that there is insufficient evidence in support of the landlord's claim.

For the above reasons I dismiss the landlord's application in its entirety.

Conclusion

The landlord's application 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: January 24, 2019

Residential Tenancy Branch