Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes   OPR MNR MNSD FF

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;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. The tenant did not attend this hearing.

Preliminary Issue: Service of Landlord's Application and 10 DAY Notice to End Tenancy

The landlord first testified that she served the application for dispute resolution package by sending a copy by registered mail to the tenant. She testified that she first served it by hand and then sent it registered mail. The landlord then testified that she was mixed up and first sent it by registered mail and then served by hand as the registered mail was returned to her as unclaimed. The landlord could not provide a date of service and stated that she had submitted the mail receipt on file.

The registered mail receipt on file is post-marked December 4, 2018 which is prior to the filing of the landlord's application.

The landlord then testified that the registered mail receipt on file was for the 10 Day Notice. The landlord's application states the 10 Day Notice was served on December 8, 2018 in person. The landlord clarified that she reserved the 10 Day Notice as the mail was unclaimed.

The landlord then testified that the application was served on December 22, 2018 and served in person to the tenant. The landlord referred to a signed witness statement submitted with the application. The signed witness statement indicates that it was the 10 Day Notice to End Tenancy that was served on December 22, 2018. The landlord testified that this was an error.

Based on the above, I am not convinced that the tenant was served with the landlord's application and notice of hearing as required under section 89 of the Act.

Further, the landlord also failed to submit a copy of the 10 Day Notice as evidence on file.

Section 46 of the Act contains provisions by which a landlord may end a tenancy for unpaid rent by giving notice to end tenancy. Section 46(2) requires that a notice must comply with section 52 [form and content of notice to end tenancy]. In order to be granted an order of possession under section 55 of the Act, it must be demonstrated that the Notice to End tenancy complies with the form and content requirements of section 52.

Section 52 of the Act states as follows:

Form and content of notice to end tenancy

> 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,
> >
> > (b) give the address of the rental unit,
> >
> > (c) state the effective date of the notice,
> >
> > (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and
> >
> > (e) when given by a landlord, be in the approved form.

As the landlord did not submit a copy of the 10 Day Notice as evidence, even if this hearing had proceeded, I would be unable to confirm if the 10 Day Notice complies with the form and content requirements of Section 52 of the Act, which is a requirement before granting an order of possession.

The landlord's application is dismissed with leave to reapply.

Conclusion

I dismiss the landlord's application with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

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: February 01, 2019

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Residential Tenancy Branch