



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDCL-S MNRL-S OPL-4M OPN OPR

Introduction

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

- 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;
- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- a monetary order for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:10 am in order to enable the tenants to call into this teleconference hearing scheduled for 11:00 am. The landlord's representative attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord's representative and I were the only ones who had called into this teleconference.

The landlord's representative testified that the tenants were personally served the notice of dispute resolution and supporting evidence on January 25, 2019. I find that the tenants were deemed served with this package on January 25, 2019, in accordance with section 89 of the Act.

Preliminary Issue – Sufficiency of Evidence

The landlords entered only a single document into evidence, a copy of the tenancy agreement. The landlords' request for an order of possession is based on the issuance of a 10 Day Notice to End Tenancy and a Four Month Notice to End Tenancy (collectively, the "**Notices**"). The Notices were not entered into evidence. Additionally, the landlords provided no documents whatsoever regarding the calculation of the amount the landlords claimed.

Rule of Procedure 2.5 states:

2.5 Documents that must be submitted with an Application for Dispute Resolution

To the extent possible, the applicant should submit the following documents at the same time as the application is submitted:

- a detailed calculation of any monetary claim being made;
- a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and
- copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17 [Consideration of new and relevant evidence].

I find that the landlords failed to comply with this mandatory rule.

Additionally, section 52 of the Act states:

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,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
 - (e) when given by a landlord, be in the approved form.

As the Notices have not been entered into evidence, I cannot make any determination as to whether or not either is effective.

The landlord's representative testified that the Notices were in the landlords' possession, but that she did not have access to them at the hearing.

As the landlords have failed to comply with Rule 2.5, and have not submitted the Notices into evidence, thus preventing me from determining if they are effective, I dismiss the landlords' application in its entirety, 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: March 08, 2019

Residential Tenancy Branch