



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BOUNDARY MANAGEMENT INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This is a scheduled participatory hearing as a result of a denied direct request proceeding, which deals 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 recover its filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony. The landlord's agent, S.L. stated that the tenant was served with the notice of hearing package via Canada Post Registered Mail on May 30, 2019. The tenant argued that the package was only received 1 day prior to the scheduled hearing and as such no documentary evidence was submitted. Both parties clarified and agreed that the package was served to the wrong address for the same complex and as a result was not served to the tenant. Both parties agreed that the landlord personally served the tenant with the notice of hearing package and the submitted documentary evidence in person on July 10, 2019. The tenant raised a concern that as the package was received just prior to the hearing that the tenant might have issues in responding to the landlord's claims. In the circumstances, both parties were informed that as the hearing progressed and the tenant might need an opportunity to adjourn the hearing regarding a response of documentary evidence to the landlord's claims, an opportunity would be given to the tenant to identify this during the hearing and a request for an adjournment would be considered at that time. The tenant confirmed there was no service or documentary issue(s) remaining to proceed with the hearing. As such, I find that both parties have been sufficiently served and are deemed served as per section 90 of the Act.

At the outset, both parties agreed that as of the date of this hearing there are no rental arrears. As such, the landlord cancelled the request for a monetary claim, but still wishes to proceed with an order of possession and recovery of the filing fee.

No requests for an adjournment were made by either party.

Issue(s) to be Decided

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

Is the tenant entitled to a monetary order for recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord stated that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated May 8, 2019 by posting it to the rental unit door on May 8, 2019 with a witness. The 10 Day Notice states that the tenant failed to pay rent of \$2,974.00 that was due on May 1, 2019 and provides for an effective end of tenancy date of May 18, 2019.

The landlord's agent, S.L. attempted to provide details of unpaid rent in which the tenant was in rental arrears as per the 10 Day Notice dated May 8, 2019. Over the course of the 32 minute hearing, the landlord was unable to provide sufficient details of how much was owed for which month in which the 10 Day Notice was based. The landlord's agent stated that she was currently out of town and did not have that information available to her.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The landlord was unable to provide sufficient details of unpaid rent based upon the 10 Day Notice dated May 8, 2019.

In this case, I find that although the tenant does not dispute that there were rental arrears owed, however the landlord has failed to provide sufficient details of amounts owed for which the 10 Day Notice dated May 8, 2019 is based. Repeated attempts by the landlord's agent were unsuccessful as she was out of town during the hearing and did not have access to this information nor was it provided to her. Without these details, I find that the landlord has not established a claim for an order of possession for unpaid rent. The 10 Day Notice dated May 8, 2019 is set aside and cancelled. The tenancy shall continue.

Conclusion

The landlord's 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: July 12, 2019

Residential Tenancy Branch