



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNDL-S, FFL

Introduction

On March 1, 2021, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for unpaid rent pursuant to Section 46 of the *Act*, seeking to apply the security deposit towards this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On March 10, 2021, this Application was set down for a participatory hearing on May 17, 2021 at 11:00 AM.

The Landlord attended the hearing; however, the Tenant did not make an appearance at any point during the 34-minute teleconference. At the outset of the hearing, the Landlord was informed that recording of the hearing was prohibited and he was reminded to refrain from doing so. He acknowledged this term. As well, he provided a solemn affirmation.

He advised that his building manager posted the Notice of Hearing package to the Tenant’s door on March 10, 2021. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was deemed to have received the Landlord’s Notice of Hearing package three days after it was posted. However, the Landlord was informed during the hearing that his request for a Monetary Order cannot be considered in this Application as he did not serve the Notice of Hearing package in accordance with Section 89(1) of the *Act*. As such, this claim for monetary compensation was dismissed with leave to reapply.

The Landlord advised that he did not submit any evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that the tenancy started on February 12, 2019, that rent was currently established at \$650.00 per month, and that it was due on the first day of each month. A security deposit of \$325.00 was also paid. A copy of the tenancy agreement was not submitted as documentary evidence.

He advised that a 10 Day Notice to End Tenancy for Unpaid Rent was served to the Tenant; however, he was not sure when he served this Notice as he did not retain a copy of it.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord 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.

As the Landlord did not have a copy of the Notice and as he was unable to submit a copy for my review, I am unable to determine if the Notice served to the Tenant was valid and if it complied with respect to the form and content of Section 52 of the *Act*. Therefore, I am unable to grant the Landlord an Order of Possession on this Application.

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 this Application.

Conclusion

Based on the above, the Landlord's request for an Order of Possession is dismissed without leave to reapply. However, the Landlord's claim for monetary compensation 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: May 17, 2021

Residential Tenancy Branch