



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU, MNRL-S, MNDCL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. A participatory hearing was held on January 9, 2023. The Landlord applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

The Landlord and the Tenant both attended the hearing and provided affirmed testimony. The Tenant acknowledged receipt of the Landlord's Notice of Dispute Resolution Proceeding and evidence package. The Tenant did not provide any documentary evidence.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Issues

The Landlord is seeking multiple remedies under multiple sections of the *Act*, a number of which were not sufficiently related to one another. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues the Landlord applied for, and based on the evidence before me, I find the most pressing issues in this application are related to the Order of Possession based off the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the

Notice) along with any related unpaid rent. All other matters will be severed off from this proceeding and are dismissed, with leave to reapply.

I note the Landlord applied for a separate monetary order for unpaid utility amounts accrued. However, this hearing was scheduled to hear the Landlord's request for an Order of Possession based off the Notice along with any related unpaid rent. Since these utility amounts were not included or noted on the Notice from August 2022, I will not consider the Landlord's request for unpaid utility amounts as part of this proceeding (only rent relating to the Notice).

In summary, I dismiss all items on the Landlord's application, with leave to reapply, with the exception of the following items:

- An order of possession based off the Notice from August 2022
 - o A monetary order for any unpaid rent related to the Notice

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession based off the Notice?
 - a. Is the Landlord entitled to a monetary order for unpaid rent?

Background and Evidence

As per the tenancy agreement provided into evidence, the tenancy started around December 21, 2020, and monthly rent is \$1,600.00, due on the first of the month. The Landlord currently holds a security deposit of \$800.00. The Landlord testified that the Tenant has had issues paying rent and utilities for many months.

More specifically, the Landlord stated that the Tenant has not paid any rent since August 2022, and owes \$9,600.00 rent.

After not receiving any rent for August 2022, the Landlord issued the Notice on August 29, 2022, by posting a copy to the Tenant's front door. A copy of the Notice was provided into evidence, and it shows that the Notice was issued based on \$1,600.00 that was unpaid as of August 1, 2022.

The Tenant stated that he did not receive the Notice, and stated that nothing was left on his door. The Landlord did not have any proof of service for the Notice issued in August of 2022.

Analysis

Based on the unchallenged affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a Tenant must pay rent when it is due unless the Tenant has a right under the *Act* to deduct all or a portion of rent. When a Tenant does not pay rent when due, section 46(1) of the *Act* permits a Landlord to end the tenancy by issuing a notice to end tenancy. A Tenant who receives a notice to end tenancy under this section has five days after receipt, under section 46(4) of the *Act*, to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a Tenant does not pay rent in full or dispute the notice, the Tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

In this case, I find the Landlord has failed to sufficiently demonstrate that he served the Tenant with the Notice on August 29, 2022. The Landlord provided no proof of service to corroborate that he served this Notice as he asserts, and the Tenant refutes getting the Notice from the Landlord. Without further evidence to support service, I find the Landlord has failed to sufficiently serve the Tenant with the Notice. As such, I dismiss the Landlord's application for an Order of Possession based off the August 29, 2022, Notice, with leave to reapply. The Landlord's related request for a monetary order for the rent is also dismissed, with leave to reapply, given the issues with service of the Notice.

The Landlord is at liberty to re-issue a new 10 Day Notice, with any and all unpaid rent/utilities owing as of that time. However, the Landlord is encouraged to provide proof of service for any important documents going forward, including at any future proceedings.

The parties may wish to attempt to resolve issues regarding unpaid rent and utilities on their own, prior to filing any future applications.

Conclusion

The entirety of the Landlord's application is dismissed, with leave to reapply, given he failed to sufficiently demonstrate that he served the Notice to the Tenant. However, the Landlord's application to recover the filing fee for this hearing is dismissed, without leave.

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 10, 2023

Residential Tenancy Branch