



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR
 OPR-DR, MNR-DR, FFL

Introduction

This hearing was scheduled to convene at 9:30 a.m. on November 14, 2023 concerning applications made by the tenant and by the landlord.

The tenant has applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities.

The landlord has applied by way of the Direct Request process as against 2 tenants for an order of possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenants for the cost of the application.

The landlord attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the tenants joined the call. Therefore, I dismiss the tenant's application without leave to reapply.

The landlord testified that the tenant was served with the Notice of Dispute Resolution Proceeding and all of the landlord's evidence by U.S. Postal Service on November 29, 2023 and has provided a postal receipt containing that date and a tracking number. The Registered Mail Receipt indicates that both tenants named in the landlord's application were served together in one package.

Issue(s) to be Decided

The issues remaining to be decided are:

- has the landlord established that the 10 Day Notice to End Tenancy For Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?
- has the landlord established a monetary claim as against the tenants for unpaid rent or utilities?

Background and Evidence

The landlord testified that this fixed-term tenancy began on May 1, 2023 and expires on April 29, 2024. A copy of the tenancy agreement has been provided for this hearing, which names 2 tenants (TH and KC), and states that the fixed term expires on April 29, 2023, which the landlord testified is an error. Rent in the amount of \$2,200.00 is payable on the 1st day of each month. A security deposit in the amount of \$1,100.00 was collected from the tenants at the outset of the tenancy, however the tenancy agreement is blank with respect to a security deposit. The landlord also testified that no pet damage deposit was collected. The rental unit is the 1st floor suite in a house with another suite in the upper level.

The landlord further testified that after 2 months of the tenancy, the tenant (KC) moved out without notice to the landlord. About 2 or 3 weeks after that tenant vacated, the other tenant (TH) advised the landlord that the other tenant had vacated and the tenant's girlfriend had moved in. Two or three weeks ago, the tenant's girlfriend advised the landlord that the tenant (TH) wanted to move out, but the landlord is not sure if he did; the girlfriend of the tenant (TH) still resides in the rental unit.

The landlord served the tenants with a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities by attaching it to the door of the rental unit on October 2, 2023 with a witness. A copy of the first 2 pages of the 3-page Notice has been provided as evidence for this hearing. It is dated October 2, 2023 and contains an effective date of vacancy of October 12, 2023 for unpaid rent in the amount of \$2,200.00 that was due on October 1, 2023 and unpaid utilities in the amount of \$127.00 following written demand on September 3, 2023. The landlord testified that the third page is just information, and the landlord served all 3 pages.

The landlord further testified that the tenants paid \$2,180.00 on October 10, 2023, leaving a balance of \$20.00 in unpaid rent. The tenancy agreement also indicates that late rent payments are subject to a \$25.00 late fee. The tenant's girlfriend paid rent for November on November 2, 2023 and the landlord claims the late fee for October and November, 2023.

The landlord also claims \$15.00 for an outstanding water bill; \$82.00 for hydro and \$60.00 for Fortis gas. The tenancy agreement has 2 paragraphs that deal with utilities. The first states that the tenants are responsible for 40% of hydro, water and Fortis gas, but the second states that the utilities are included in the rent. The landlord testified that was an error, and the tenants are required to pay 40%, and had paid that in the past.

The landlord claims a monetary order in the amount of \$227.00, which includes \$20.00 outstanding rent for October, 2023; the utilities and 2 late fees of \$25.00 each.

Analysis

Firstly, where a party makes a monetary claim as against other parties, the claiming party must serve the Notice of Dispute Resolution Proceeding and all evidence to all respondents named in the application. In this case, the landlord has served 2 tenants in the same mailing, which is not in accordance with the law. Therefore, I dismiss the landlord's application for a monetary order with leave to reapply.

The law also states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an order of possession in favour of the landlord, so long as the Notice given is in the approved form. The landlord has not provided all pages of a Notice served on the tenants, and therefore, I cannot be satisfied that it was given in the approved form. Therefore, I dismiss the landlord's application for an order of possession.

Since the landlord has not been successful with the application the landlord is not entitled to recover the filing fee from the tenants.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed without leave to reapply.

The landlord's application for an order of possession is hereby dismissed without leave to reapply.

The landlord's application for a monetary order for unpaid rent or utilities is hereby dismissed with leave to reapply.

The landlord's application for recovery of the filing fee is hereby 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: November 14, 2023

Residential Tenancy Branch