



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by landlord and the tenant.

At the outset of the hearing the landlord clarified that he was no longer seeking compensation for utilities but that he still sought compensation for unpaid rent. As the landlord had marked that he sought compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement and not marked that he was seeking a monetary order for unpaid rent, I amend the landlord's application to seek a monetary order for unpaid rent and to not include compensation for damage or loss.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Act*.

Background and Evidence

The parties agreed the tenancy began sometime in December 2010 as a month to month tenancy for the monthly rent of \$470.00 due on the 1st of each month and that a security deposit was paid.

The parties disagree on the specific date the tenancy began and on how much of the security deposit was paid by the tenant.

Both parties agree the landlord issued an undated 10 Day Notice to End Tenancy for Unpaid Rent. The landlord testified that he issued this notice on March 2, 2011 but once the tenant identified that the notice was undated, he issued a new 10 Day Notice on March 14, 2011.

The landlord's Application for Dispute Resolution seeking this hearing was received by the Residential Tenancy Branch on March 10, 2011.

Analysis

As the landlord acknowledged that the first 10 Day Notice was undated and therefore ineffectual by issuing a new 10 Day Notice to End Tenancy on March 14, 2011, I find the only notice to consider in this decision is the one dated March 14, 2011.

Section 55(2) of the *Act* states a landlord may request an order of possession by filing an Application for Dispute Resolution if, among other things, a notice to end tenancy has been given by the landlord, the tenant has not disputed the notice and the time for making that application has expired.

As the notice issued by the landlord falls under Section 46 of the *Act* the time allowed for the tenant to file an Application for Dispute Resolution to dispute the notice is 5 days from the date the tenant receives the notice.

As the landlord issued the notice on March 14, 2011, the earliest the landlord could apply for an order of possession, in accordance with Section 55(2) would be March 20, 2011. As the landlord has filed his application both prior to the issuance of the 10 Notice and the ending of the period allowed for the tenant to file an Application to Dispute, I find the landlord's application is premature.

Conclusion

For the reasons noted above, I dismiss the landlord's Application 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 30, 2011.

Residential Tenancy Branch