



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts.

The Landlord's agent admitted that the application in this matter was made to enforce a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 4, 2011. However the Tenants applied to cancel that Notice on November 8, 2011 and their application was heard on November 24, 2011. The Landlord filed its application to enforce that Notice on November 23, 2011. However RTB Rule of Procedure 5.1 states that a cross-application will not be scheduled to be heard with another application unless it is filed **a minimum of 5 days** prior to the date scheduled for the original hearing. Consequently, the Landlord's application in this matter was not scheduled to be heard on November 24, 2011.

The Landlord then served the Tenant with another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 2, 2011. The Tenants applied to dispute that Notice on December 6, 2011 but have not yet served the hearing packages. The hearing of that application is currently scheduled for December 22, 2011 at 10:30 a.m. The Landlord's agent sought to enforce that 10 Day Notice at the hearing of this application or alternatively to have this application adjourned to be heard with the Tenants' application on December 22, 2011. However, I find that the Landlord's application must instead be dismissed.

The Landlord's application in this matter was filed on November 23, 2011, prior to serving the Tenants with the 10 Day Notice to End Tenancy for Unpaid Rent dated December 2, 2011. As the subject matter regarding the Landlord's application was concluded on November 24, 2011, there was no further need for the Landlord's application. However the Landlord did not cancel its application. Instead the Landlord's agent waited until December 5, 2011 to submit a copy of the 10 Day Notice dated December 2, 2011 to the Residential Tenancy Branch in the hope of enforcing that Notice. I find that this is an abuse of the dispute resolution process and pursuant to s. 62(4) of the Act the Landlord's application is dismissed. The Landlord will have to re-apply to enforce the 10 Day Notice dated December 2, 2011.

Conclusion

The Landlord's application 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: December 08, 2011.

Residential Tenancy Branch