



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order of possession due to unpaid rent, a monetary order for unpaid rent and for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and no party raised any issue regarding service of the evidence.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to documentary evidence timely submitted prior to the hearing, and 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.

Issue(s) to be Decided

Is the landlord entitled to an order of possession due to unpaid rent, monetary order for unpaid rent and to recover the filing fee?

Background and Evidence

The tenants originally began a tenancy with the landlord on November 1, 2011. The parties were in dispute resolution in June 2012, which resulted in the landlord being issued an order of possession.

Despite this, the parties signed a new tenancy agreement, with the 6 month, fixed term tenancy starting on July 1, 2012, monthly rent is \$3500.00 and the tenants paid a security deposit of \$1750.00.

The landlord said that she served the tenants a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), but was unclear of the date served.

The Notice was dated July 16, 2012, with an effective move out date of July 31, 2012 and listed unpaid rent of \$6050.00 due as of July 1, 2012. The landlord's application listed a monetary claim of \$4300.00 as unpaid rent.

When questioned, the landlord said the monetary claim listed on the application was a "typo," even though the application was completed by hand.

The landlord submitted a copy of a cheque in the amount of \$3500.00 dated July 1, 2012, payable to the landlord for rent.

The landlord said the cheque was returned and provided no evidence that it had been.

When questioned about additional evidence, such as proof of service of the Notice, accounting records and proof that the July rent cheque had been returned, the landlord said she had the evidence and could fax it in.

Tenants' response-

The tenants denied receiving the 10 Day Notice.

The tenants said that the landlord was paid rent because the landlord was given 6, post dated cheques for the length of the entire tenancy, July through December 2012.

The tenant said that the person attending the telephone conference call hearing was not their landlord as their landlord spoke with a heavy accent. The tenant questioned the identity of the person attending the hearing and requested the hearing be adjourned to an in person hearing.

I note the person attending repeatedly stated she was the listed landlord.

Analysis

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

The Act allows a landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent upon a tenant who has not paid the rent in full on the day it is due. To be effective, however, the landlord has to prove the Notice was served upon the tenant.

In the case before me, I find the landlord submitted insufficient evidence to prove that the tenants were served the Notice or the date the Notice was served.

Additionally, the landlord failed to convince me that the amount listed on the Notice was correct, as the tenancy started on July 1, 2012, with a monthly rent of \$3500.00, and the Notice dated July 16, 2012, showed rent of \$6050.00 owed as of July 1, 2012.

As the landlord also listed a monetary claim for an inexplicable \$4300.00, I found I could not rely on the landlord's oral evidence. There was no written evidence which would substantiate the landlord's application.

I also find the landlord submitted insufficient evidence that the rent cheque for July was returned to her unpaid.

I also would not allow the landlord to submit evidence after the hearing.

Conclusion

Due to the above, I find the landlord submitted insufficient evidence to support her application and I therefore dismiss the application, without leave to reapply.

The landlord is at liberty to issue another 10 Day Notice to End Tenancy for Unpaid Rent to the tenants.

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: August 22, 2012.

Residential Tenancy Branch