



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNSD, MNDC, MND, MNR, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for an order of possession for the rental unit due to unpaid rent, a monetary order for money owed or compensation for damage or loss, unpaid rent, and alleged damage to the rental unit, for authority to keep all or part of the tenant's security deposit or pet damage deposit, and for recovery of the filing fee paid for this application.

The landlord attended; the tenant did not attend the telephone conference call hearing.

The landlord gave evidence that he served the tenant with the application for dispute resolution and notice of hearing by registered mail on March 18, 2015. The landlord supplied testimony of the tracking number of the registered mail.

Based upon the submissions of the landlord, I find the tenant was served notice of this hearing in a manner complying with section 89(1) of the Act and the hearing proceeded in the tenant's absence.

The landlord was provided the opportunity to present his evidence orally and to refer to relevant documentary evidence 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 Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent, monetary compensation, and to recovery of the filing fee paid for this application?

Background and Evidence

The landlord confirmed that there was no written tenancy agreement. The landlord stated that this tenancy began in July 2014, monthly rent is \$650.00, payable on the 1st day of each month, and a security deposit of \$325.00 was paid by the tenant.

The landlord gave evidence that on March 1, 2015, he served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by attaching it to the tenant's door, listing unpaid rent of \$650.00 as of March 1, 2015. The effective vacancy date was not listed on the Notice.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained that alternatively the tenant had five days to dispute the Notice by making an application for dispute resolution.

The landlord submitted that the tenant did pay rent for March, but not within 5 days of service of the Notice, as the payment was made on March 18, 2015.

Analysis

Under section 46(1) of the Act, a landlord may seek to end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy, as was the case here when the landlord served the tenant the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

To meet the requirements of the Act, the earliest the landlord could give the tenant the notice was March 2, 2015, the first day after monthly rent was due. I therefore find that when the landlord issued the Notice on March 1, 2015, the monthly rent was not yet overdue, as the landlord confirmed that the rent was payable on the first day of each month.

I therefore find that the Notice dated and issued by the landlord on March 1, 2015, is invalid as it was issued prior to rent being overdue, and as a result, I cancel the Notice, it is of no force or effect, with the effect that the tenancy continues until it may otherwise end under the Act.

As I have cancelled the Notice, I dismiss the landlord's application seeking an order of possession for the rental unit and monetary compensation.

Conclusion

The landlord's application for an order of possession for the rental unit and a monetary order is dismissed.

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: April 22, 2015

Residential Tenancy Branch

