



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU MNDL-S FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution seeking remedy under the *Residential Tenancy Act* (Act). The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for damages to the unit, site or property, for authorization to keep all or part of the security deposit, and to recover the filing fee.

The landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing dated March 16, 2021 (Notice of Hearing), the application and documentary evidence were considered. The landlord provided affirmed testimony that the Notice of Hearing, application and documentary evidence were served on the tenant by personal service at approximately 1:30 p.m. on March 16, 2021. The landlord stated they did not have a witness. Based on any evidence to the contrary, I find the tenant was served on March 16, 2021 via personal service and did not attend the hearing.

Preliminary and Procedural Matters

Firstly, the landlord admitted to using their own email address for the tenant, which I rectified by removing the landlord's email address in the tenant's contact information. The landlord admitted that was an error.

As a result, this decision will be emailed to the landlord and sent by regular mail to the tenant who continues to occupy the rental unit.

Issues to be Decided

- Is the landlord entitled to an order of possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for unpaid rent or utilities, and if so, in what amount?
- Should the landlord be granted authority to retain all or part of the security deposit?
- Is the landlord entitled to the filing fee?

Background and Evidence

The landlord admitted that there is no written tenancy agreement, which I will address later in this decision. The landlord testified that the tenancy started about two years ago and that monthly rent is \$1,000.00 per month and due on the first day of each month.

Regarding the 10 Day Notice, only page 1 and 3 were submitted in evidence. The landlord failed to provide a copy of page 2 of the 10 Day Notice submitted in evidence. In addition, the landlord failed to complete the effective vacancy date on page 1 of the 10 Day Notice. The 10 Day Notice is dated March 3, 2021, and during the hearing the landlord stated they did not have a copy of the 10 Day Notice before them.

The landlord's monetary claim is for \$1,485.00 which fails to include a Monetary Order Worksheet or any other description of money owed other than the words "rent and utility". The landlord fails to specify what month rent is owing for and how much utilities owing was.

In addition, the landlord testified that the tenant paid March rent sometime in April but could not recall a specific date.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

10 Day Notice – Section 52 of the Act applies and states the following:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

- (b) give the address of the rental unit,
- (c) **state the effective date of the notice,**
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) **when given by a landlord, be in the approved form.**
[Emphasis added]

Firstly, I find the effective vacancy date is missing from the 10 Day Notice and page 2 of the 10 Day Notice was not submitted in evidence for my consideration. As a result, I find the 10 Day Notice is not effective and I cancel the 10 Day Notice as it has no force or effect under the Act as it does not comply with section 52(c) of the Act.

I caution the landlord to fully complete the 10 Day Notice and keep a copy of all pages in the future.

In addition, section 13(1) of the Act requires that all tenancy agreements after January 1, 2004 **must be prepared in writing**. As a result, **I caution** the landlord to ensure that all future tenancy agreements are in writing.

I ORDER that the tenancy to continue until ended in accordance with the Act.

The landlord is at liberty to serve a new 10 Day Notice if the tenant currently owes rent however I am not satisfied that the landlord set out the unpaid utilities portion property before me and as a result, I grant the landlord liberty to reapply for any unpaid utilities, if necessary.

I do not grant the filing fee as the landlord's application was unsuccessful.

Conclusion

I dismiss the landlord's application in full due to insufficient evidence, without leave to reapply, with the exception of any unpaid utilities.

The 10 Day Notice is of no force or effect as it was not completed correctly, was missing critical information and the landlord failed to submit page two of the 10 Day Notice for my consideration.

I order that the tenancy continue until ended in accordance with the Act.

I do not grant a monetary order for March 2021 rent as the landlord confirmed it was paid in April.

I do not grant the filing fee as noted above.

This decision will be emailed to the landlord and sent by regular mail to the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: June 18, 2021

Residential Tenancy Branch