



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") for an order of possession for the rental unit due to unpaid rent, a monetary order for unpaid rent and for money owed or compensation for damage or loss, for authority to retain the tenant's security deposit and to recover the filing fee.

The tenant did not appear at the telephone conference call hearing. The landlord's agent appeared and gave affirmed testimony.

The landlord testified that the tenant was served with the Application for Dispute Resolution and Notice of Hearing (the Hearing Package) by registered mail on September 15, 2012. The landlord supplied the tracking number and receipt of the registered mail. Section 90 of the Act states that documents served in this manner are deemed received five days later. Thus the tenant was deemed served the Hearing Package on September 20, 2012.

The landlord's agent said that the tenant has vacated the rental unit and no longer requires an order of possession; I have therefore amended their application excluding such a request.

Issue(s) to be Decided

Is the landlord entitled to a monetary order and to recover the filing fee?

Background and Evidence

This tenancy began on April 1, 2012, monthly rent is \$750.00, and a security deposit of \$375.00 was paid by the tenant on or about March 24, 2012.

The landlord stated that they attended the rental unit sometime in September to ensure the tenant had vacated; however some of the tenant's belongings were still in the rental

unit, according to the landlord's agent. The landlord was uncertain of the date the tenant vacated the rental unit.

The landlord said there was a move out inspection for the rental unit conducted on October 15, 2012, which was not attended by the tenant.

The landlord gave evidence that on September 2, 2012, the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by posting it on the door, listing unpaid rent of \$770.00 as of September 1, 2012. The effective vacancy date listed on the Notice was September 13, 2012.

The Act states that documents served by posting on the door are deemed received three days later. Thus the Notice was deemed served on September 5, 2012, and the effective move out date is automatically changed to September 15, 2012.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days or in the alternative, the tenant had five days to dispute the Notice. In the event the tenant fails to do either, she is presumed to have accepted the tenancy ends on the effective date of the Notice and must vacate the rental unit.

I have no evidence before me that the tenant applied to dispute the Notice and the landlord confirmed that the tenant had not paid rent.

Analysis and Conclusion

Based on the oral and written evidence and on a balance of probabilities, I find as follows:

Section 89 of the Residential Tenancy Act requires that an application for dispute resolution be served upon the respondent (the tenant in this case) by leaving it with the person, by sending a copy by registered mail to the address at which the person resides or if a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant.

In the case before me, as the tenant failed to pay rent or dispute the Notice, the tenancy was conclusively ended by operation of the landlord's Notice on the effective date of the Notice, September 15, 2012.

The landlord served the Hearing Package to the tenant via registered mail on September 15, 2012, and the tenant was deemed to have received it on September 20, 2012.

As the landlord was uncertain of the date the tenant vacated the rental unit, I therefore, on a balance of probabilities and insufficient evidence by the landlord, cannot find that the tenant was served with the Notice of Hearing and Application for Dispute Resolution as required by Section 89 of the Act.

I therefore dismiss the landlord's application, with leave to reapply.

Leave to reapply does not extend any applicable time limitation deadlines.

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: October 17, 2012.

Residential Tenancy Branch