



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Ra-An Enterprises Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:52 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Preliminary Issues – Service of Documents

Landlord AB (the landlord) testified that she placed the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) under the tenant's door on December 16, 2013 at 9:02 p.m. She entered into written evidence a witnessed Proof of Service document regarding her provision of the 10 Day Notice to the tenant in the method outlined above.

The landlord testified that she sent the tenant a copy of the landlord's dispute resolution hearing package by registered mail on February 4, 2014. She provided the Canada Post Tracking Number to confirm this registered mailing. She testified that her hearing package was returned to her by Canada Post as unclaimed by the tenant.

Analysis of Service of Documents

Section 88 of the *Act* sets out the following requirements for the service of documents, including the service of a 10 Day Notice to a tenant:

88 *All documents, other than those referred to in section 89 [special rules for certain documents], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:*

(a) by leaving a copy with the person;...

(c) by sending a copy by ordinary mail or registered mail to the address at which the person resides...

(d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;

(e) by leaving a copy at the person's residence with an adult who apparently resides with the person;

(f) by leaving a copy in a mail box or mail slot for the address at which the person resides...

(g) by attaching a copy to a door or other conspicuous place at the address at which the person resides...;

(h) by transmitting a copy to a fax number provided as an address for service by the person to be served;

(i) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];

(j) by any other means of service prescribed in the regulations...

As discussed with the landlord at the hearing, the landlord has not served the tenant with the 10 Day Notice in any of the ways outlined above as is required by the *Act*. As I find that the landlord has not served the tenant with the 10 Day Notice, I am unable to issue an Order of Possession to the landlord on the basis of the 10 Day Notice. I thereby dismiss the landlord's application for an Order of Possession on the basis of the 10 Day Notice, which is no longer of any force or effect.

Section 89(1) of the *Act* establishes the following Special rules for serving certain documents, which include an application for dispute resolution for a monetary Order.

89(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;...*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;...*

I find that the landlord has served the tenant with her dispute resolution hearing package, including the application for dispute resolution, in accordance with section 89(1)(c) of the *Act*. In accordance with section 90 of the *Act*, I find that the tenant has been deemed served with the landlord's application for dispute resolution seeking a monetary award on February 10, 2014, the fifth business day after the registered mailing.

At the commencement of the hearing, the landlord confirmed that the tenant has not paid any security deposit to the landlord, although one was required as part of the Residential Tenancy Agreement between the parties. As no security deposit has been paid, the landlord cannot claim to recover any security deposit. This portion of the landlord's application was withdrawn and the amount of her requested monetary award was reduced from \$2,025.00 to \$1,800.00 plus the \$50.00 filing fee to reflect the correct amount the landlord identified as currently owed by the tenant.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy began on November 13, 2013. The monthly rent is set at \$450.00, payable in advance on the last day of each month.

The landlord gave undisputed sworn testimony and written evidence that there has been no rent paid towards this tenancy for December 2013, January 2014, February 2014 and March 2014. The landlord requested a monetary award in the amount of \$1,800.00 for these months, as well as the \$50.00 filing fee.

Analysis

Based on the landlord's undisputed sworn testimony and written evidence, I find that the landlord is entitled to a monetary award of \$1,800.00, amounting to four months of unpaid rent at a monthly rent of \$450.00. As the landlord has been successful in this application, I allow the landlord to recover the \$50.00 filing fee from the tenant.

Conclusion

I issue a monetary Order in the landlord's favour in the amount of \$1,850.00, to allow the landlord to recover unpaid rent owing from December 1, 2013 until March 30, 2014, and to recover the filing fee for this application. The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The landlord's application for an Order of Possession based on the 10 Day Notice is dismissed without leave to reapply. The existing 10 Day Notice is of no effect or force. This tenancy continues. If the landlord wishes to submit a new application for an Order of Possession for unpaid rent, the landlord will need to issue a new 10 Day Notice and serve it to the tenant in accordance with the *Act*.

The landlord's application to retain the tenant's security deposit is withdrawn as no such deposit has been paid towards this tenancy.

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: March 21, 2014

Residential Tenancy Branch

