



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNR, OPR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on the Notice to End Tenancy for Unpaid Rent dated October 9, 2012, a monetary order for rent owed, an order to retain the security deposit in partial satisfaction of the claim and reimbursement for the cost of filing the application.

Although the tenant was served with the Application for Dispute Resolution and Notice of Hearing by having it posted on the door of the rental unit, on October 18, 2012, the tenant did not appear.

Preliminary Matters

Legislation: Manufactured Home Park Tenancy Act or Residential Tenancy Act

The tenant made application under the *Manufactured Home Park Tenancy Act*. However, section 4 of the Act states:

“This Act does not apply with respect to any of the following:

(a) a tenancy agreement under which a manufactured home site and a manufactured home are both rented to the same tenant”

In this case, the landlord owns the home, but it is situated in a Manufactured Home Park on a site rented from the park owners. The landlord has rented the home to a third party under a tenancy agreement.

Given the above, I find that this matter is not under the jurisdiction of the Manufactured Home Park Tenancy Act and will therefore proceed under the Residential Tenancy Act.

Service of the Hearing Notification

At the outset of the hearing the landlord testified that the landlord slipped the Notice of Dispute Resolution Hearing on the tenant’s door on May 17, 2014.

Sections 88 and 89 of the Act determine the method of service for documents. The landlord has applied for a Monetary Order under section 38 and 67 of the Act which

states that the landlord must serve the tenant as set out under Section 89(1). This requires service in one of the following ways:

- (a) **by leaving a copy with the person, (personal service);**
- (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;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*]. (my emphasis)

An application for dispute resolution seeking a monetary order must be served as described above.

However, section 89(2) of the Act does permit an application by a landlord under section 55 dealing with a request for an order of possession for the landlord, to be served by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant or by attaching a copy to a door or other conspicuous place at the address at which the tenant resides, as well as personally or by registered mail.

In this instance, I find that the landlord chose to put the Notice of Hearing under the tenant's door. I find that this method of service would comply with the Act for the purpose of seeking an order of possession, but is not considered adequate service to proceed with a monetary claim.

Accordingly, the portion of the landlord's application relating to the monetary order for rent owed is found not to be properly served in compliance with the Act and must be dismissed.

However, the hearing will proceed with respect to the landlord's request for an Order of Possession.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent?

Background and Evidence

The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy dated March 18, 2014 with effective date of March 31, 2014. The landlord testified that the tenancy began on around September 2013 and no security deposit was paid.

The landlord testified that the current rent is \$325.00 and the tenant fell into arrears between November and now, having only made a partial payment of \$300.00 in April 2014, but still owes rent for several months.

The landlord testified that the tenant has not vacated the unit and did not dispute the Notice. The landlord requests an Order of Possession.

Analysis

Based on the testimony of the landlord, I find that the landlord properly served the tenant with a Notice to End Tenancy for Unpaid Rent. The tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. Based on the above facts I find that the landlord is entitled to an Order of Possession.

I hereby issue an Order of Possession in favour of the landlord effective two days after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

The monetary portion of the landlord's application is dismissed with leave to reapply.

Conclusion

The landlord is successful in being granted an Order of Possession but the landlord's request for a monetary order for rental arrears was dismissed with leave for service.

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: July 10, 2014

Residential Tenancy Branch

