



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Gateway Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss, to retain all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution. At the outset of the hearing the Landlord withdrew the application for an Order of Possession.

The Agent for the Landlord stated that on July 17, 2014 the Application for Dispute Resolution, the Notice of Hearing and documents the Landlord wishes to rely upon as evidence were sent to the Tenant, via registered mail, at rental unit. The Agent for the Landlord cited a tracking number that corroborates this statement. She stated that these documents were recently returned to the Landlord by Canada Post.

Issue(s) to be Decided

Is the Landlord entitled to monetary Order for unpaid rent and to keep all or part of the security deposit?

Background and Evidence

The Agent for the Landlord stated that this tenancy began on May 01, 2009 and that at the end of the tenancy the Tenant was required to pay monthly rent of \$760.00 by the first day of each month.

The Agent for the Landlord stated that the Tenant did not pay rent for July of 2014 so she posted a Ten Day Notice to End Tenancy for Unpaid Rent on the door of the rental

unit on July 03, 2014, which had an effective date of July 16, 2014. The Notice declared that the Tenant owed \$760.00 in rent that was due on July 01, 2014.

The Agent for the Landlord stated that she had no contact with the Tenant after July 03, 2014 and that she did not attempt to enter the rental unit until July 29, 2014. She stated that when she entered the rental unit she found the Ten Day Notice to End Tenancy that she posted on July 03, 2014, so she assumes the Tenant located the Notice to End Tenancy that was posted on the door. She stated that she also located an undated document from the Tenant, in which the Tenant informed the Landlord that he had vacated the rental unit.

Analysis

As the Agent for the Landlord had no contact with the Tenant after July 03, 2014, I find it entirely possible that the rental unit had been vacated by July 17, 2014. The Notice to End Tenancy that was posted on the door of the rental unit on July 03, 2014 required the Tenant to vacate by July 16, 2014 and I find it entirely possible that the Tenant complied with the Notice to End Tenancy.

I note that the Landlord made no attempts to enter the rental unit to determine if it had been vacated until July 29, 2014. The Landlord cannot therefore know, with any certainty, whether the rental unit was still being occupied on July 17, 2014.

Section 89 of the *Residential Tenancy Act (Act)* authorizes a landlord to serve an Application for Dispute Resolution and a Notice of Hearing, by registered mail, to their place of residence or to a forwarding address provided by the tenant. For all of the aforementioned reasons, I find it entirely possible that the Tenant had vacated the rental unit prior to the Application for Dispute Resolution and Notice of Hearing being mailed to the rental unit on July 17, 2014. I therefore find that I have insufficient evidence to conclude that the Application for Dispute Resolution and a Notice of Hearing were served to the Tenant in accordance with section 89 of the *Act*.

In determining this matter I was influenced, to some degree, by the Agent for the Landlord's testimony that the Application for Dispute Resolution and Notice of Hearing were returned to the Landlord by Canada Post. These documents may not have been received by the Tenant because he was no longer living at the rental unit.

As the Landlord has failed to establish that the Application for Dispute Resolution and Notice of Hearing were served in accordance with section 89 of the *Act*, I find that I am unable to proceed with the hearing in the absence of the Tenant.

Conclusion

The Landlord's Application for Dispute Resolution is dismissed, with leave to reapply. This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: September 16, 2014

Residential Tenancy Branch

