



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OPR, MNR, MNDC, FF

Introduction

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

The landlord attended; the tenant did not attend the telephone conference call hearing.

The landlord gave evidence that she served the tenant with her application for dispute resolution and notice of hearing by registered mail on January 23, 2015. The landlord supplied the registered mail receipt showing the tracking number and date.

Section 90 of the Act states that documents served in this manner are deemed delivered five days later. Thus the application and notice of hearing was deemed to have been delivered on January 28, 2015.

I will address my findings on the service of the landlord's application and notice of hearing later in this Decision.

The landlord was provided the opportunity to present her evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary Issue-The landlord stated that the tenant vacated the rental unit and she was not certain when the vacancy occurred; however, the landlord became aware of the

tenant having vacated the rental unit by January 29, 2015, when she attended the rental unit, according to the landlord.

I therefore amended their application to exclude a request for an order of possession due to unpaid rent and the hearing proceeded on the landlord's monetary claim.

Issue(s) to be Decided

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

Background and Evidence

The landlord's evidence shows that this tenancy began on May 1, 2014, that monthly rent was \$1400.00 and the tenant paid a security deposit of \$700.00 and a FOB deposit of \$70.00 at the beginning of the tenancy.

The landlord gave evidence that on January 10, 2015, the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), by registered mail, listing unpaid rent of \$1400.00 as of January 1, 2015. The effective vacancy date listed on the Notice was January 21, 2015. Section 90 of the Act states that documents served by registered mail are deemed delivered 5 days later. Thus the tenant was deemed to have received the Notice on January 15, 2015, and the effective move out date is automatically changed to January 25, 2015, by operation of section 53 of the Act.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within 5 days. The Notice also explained the tenant had 5 days to dispute the Notice.

The landlord stated that the tenant made no further payment of rent. The landlord's monetary claim is \$3100.00, comprised of unpaid rent for January 2015, in the amount of \$1400, loss of rent revenue for February 2015 in the amount of \$1400.00, and a move-in fee of \$300.00.

I have no evidence before me that the tenant applied to dispute the Notice.

Analysis

Section 89(1) 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, January 25, 2015.

The landlord served her application for dispute resolution and notice of hearing to the tenant via registered mail to the dispute address on January 23, 2015, and the tenant would have been deemed to have received it on January 28, 2015, if the tenant was still in possession of the rental unit.

As the landlord provided evidence that the rental unit was vacant on January 29, 2015, I therefore, on a balance of probabilities and insufficient evidence by the landlord, cannot conclude that the tenant was served with the notice of hearing and application for dispute resolution as required by Section 89(1) of the Act as there was no proof that the tenant remained in the rental unit beyond the effective move-out date of January 25, 2015.

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: February 15, 2015

Residential Tenancy Branch

