



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SALAMAT OPERATIONS SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by conference call in response to a Landlord's Application for Dispute Resolution (the "Application") for an Order of Possession and a Monetary Order for unpaid rent and to recover the filing fee for the cost of making the Application.

Preliminary Issues

An agent for the Landlord appeared for the hearing and provided affirmed testimony as well as documentary evidence in advance of the hearing. There was no appearance for the Tenant during the 19 minute duration of the hearing. As a result, I focused my attention to the service of the documents by the Landlord for this hearing.

The Landlord's agent testified that she served the Tenant with a copy of the Application and the Notice of Hearing documents to the Tenant's rental unit by registered mail on February 13, 2015. The Landlord provided the Canada Post tracking number in oral testimony as evidence for this method of service; this was noted on the inside cover of the file.

Section 90(a) of the *Residential Tenancy Act* (the "Act") provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Landlord's agent, I find that the Tenant was deemed served with the required documents on February 18, 2015 pursuant to the Act.

At the onset of the hearing, the Landlord's agent withdrew her monetary claim and only wanted an Order of Possession and to recover her filing fee. The Landlord's agent explained that she was working on a payment plan with the Tenant regarding the rental arrears but did not want to re-instate the tenancy. Therefore, I dismissed the Landlord's Application for a Monetary Order and provide leave to re-apply.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

The Landlord's agent testified that this tenancy started on August 1, 2002 on a month to month basis. The Tenant paid rent contribution to the Landlord and during July, 2014 the Tenant's rent contribution was \$1,080.00 payable on the first day of each month. The Tenant paid the Landlord a security deposit of \$450.00 on July 2, 2002 which the Landlord still retains.

The Landlord's agent testified that the Tenant only paid \$756.00 for rent during the months of July 2014 to December 2014 instead of \$1,080.00 per month as he was required. This put the Tenant in rental arrears of **\$1,944.00** (\$324.00 x 6).

The Landlord's agent testified that she served with the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on January 10, 2015 by attaching it to the Tenant's door. The Notice provided into written evidence shows an expected vacancy date of January 23, 2015 due to \$1,944.00 in unpaid rent due on January 1, 2015. The Landlord's agent testified that while the Tenant also failed to pay rent for January 2015 she only served the Tenant with the Notice for the rental arrears that had accumulated by the end of December 2014. The Landlord's agent testified that the rental arrears up until the end of December 2014 still remain unpaid.

Analysis

I have carefully considered the undisputed affirmed testimony and the written evidence of the Landlord in this decision as follows. Section 26(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement.

Sections 46(4) and (5) of the Act states that within five days of a tenant receiving a Notice, a tenant must pay the overdue rent or make an Application to dispute the Notice; if the tenant fails to do either, then they are conclusively presumed to have accepted the Notice and must vacate the rental unit on the vacancy date of the Notice.

Having examined the copy of the Notice provided into written evidence, I find the contents on the approved form complied with the requirements of Section 52 of the Act. I accept the Landlord's undisputed evidence that the Notice was served to the Tenant by attaching it to the rental unit door on January 10, 2015.

Section 90(c) of the Act provides that a document served by attaching to the door is deemed to have been received three days after being attached. Therefore, I find that the Tenant received the Notice on January 13, 2015.

Therefore, as explained and outlined in the Notice, the Tenant had until January 18, 2015 to pay the rent or make an Application to dispute the Notice, or was required to move out of the rental unit by January 23, 2014. However, I accept the Tenant has not paid the rental arrears accumulated up until December 2014, and did not make an Application to dispute the Notice, but is still occupying the rental unit.

As a result, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the vacancy date of the Notice. As the vacancy date on the Notice has now passed, the Landlord is entitled to an Order of Possession which is effective two days after service on the Tenant.

As the Landlord has been successful in this matter, the Landlord is also entitled to the **\$50.00** Application filing fee. As a result, I allow the Landlord to deduct \$50.00 from the Tenant's security deposit for the filing fee, pursuant to Section 72(2) (b) of the Act.

Conclusion

The Tenant has breached the Act by failing to pay rent under this tenancy. As a result, the Landlord is granted an Order of Possession effective **two days after service on the Tenant**. This order must be served to the Tenant and may then be filed and enforced in the Supreme Court as an order of that court.

The Landlord is allowed to recover the filing fee from the Tenant's security deposit. The Landlord's Application for a Monetary Order is dismissed with leave to re-apply.

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 09, 2015

Residential Tenancy Branch

