



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession based on unpaid rent, a Monetary Order for unpaid rent, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Only the Landlord appeared at the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified served the Tenant with the Notice of Dispute Resolution Hearing and their Application on June 9, 2016 by posting to the rental unit door. Under the *Act* documents served this manner are deemed served three days later; accordingly, I find the Tenant was duly served as of June 12, 2016 and I proceeded with the hearing in her absence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

Has the Tenant breached the *Act* or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Background and Evidence

The Landlord testified as to the terms of the tenancy and provided a copy of the residential tenancy agreement (the "Agreement").

The tenancy began September 1, 2015. Monthly rent was payable in the amount of \$550.00. A security deposit in the amount of \$275.00 was paid on August 17, 2015.

The Tenant failed to pay rent for the month of May 2016. The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on May 21, 2016 indicating the amount of \$550.00 was due as of May 5, 2016 (the "Notice").

Based on the Landlord's testimony, I find that the Tenant was served with the Notice on May 21, 2016 by posting to the rental unit door. Section 90 of the *Act* provides that documents served in this manner are deemed served three days later. Accordingly, I find that the Tenant was served with the Notice as of May 24, 2016.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, May 29, 2016. The Notice also explains the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The Landlord testified that the Tenant failed to pay rent for June 2016 and July 2016 such that he sought the sum of \$1,650.00 for unpaid rent and recovery of the \$100.00 filing fee.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the Landlord's undisputed testimony that the Tenant has not paid the outstanding rent and did not apply to dispute the Notice. Pursuant to section 46(5) of the *Residential Tenancy Act*, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Under section 26 of the *Act*, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the *Act*, unless the Tenant has some authority under the *Act* to not pay rent. In this situation I find that the Tenant had no authority under the *Act* to not pay rent.

I find that the Landlord is entitled to an Order of Possession effective **two days** after service on the Tenant. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

I dismiss, with leave to reapply, the Landlord's Application for a Monetary Order. As discussed during the hearing, service by posting to the rental unit door is effective service of an Application for an Order of Possession, but is insufficient for a Monetary Order pursuant to section 89 of the *Residential Tenancy Act*; for greater clarity, I reproduce this section as follows:

Special rules for certain documents

89 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, 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;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

(2) An application by a landlord under section 55 [*order of possession for the landlord*], 56 [*application for order ending tenancy early*] or 56.1 [*order of possession: tenancy frustrated*] must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by registered mail to the address at which the tenant resides;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

(3) A notice under section 94.21 [*notice of administrative penalty*] must be given in a manner referred to in subsection (1).

As the Landlord served the Tenant with the Notice of Dispute Resolution Hearing by posting to the door, this service is only effective for his request for an Order of Possession pursuant to section 89(2) and not for his request for a Monetary Order.

Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an Order of Possession. As he served his application for dispute resolution on the Tenant by posting to the rental unit door, his request for a Monetary Order is dismissed with leave to reapply.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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 13, 2016

Residential Tenancy Branch