



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METRO INN
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, FF

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein the Landlord sought an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on December 2, 2017 (the "Notice") and recovery of the filing fee.

The Landlord originally applied by way of Direct Request Proceeding. By Interim Decision dated December 28, 2017, the matter was adjourned to a participatory hearing. This Decision must be read in conjunction with the Interim Decision.

The participatory hearing was scheduled before me on January 25, 2018 at 9:00 a.m. Only the Landlord's representative, D.S., called into the hearing.

As the Tenant failed to call into the hearing, service of the Notice of Hearing and Landlord's application materials was considered. D.S. testified that he served the Tenant with the Notice of Hearing and the Application on January 8, 2018 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision. D.S. confirmed that the package was returned as undeliverable.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to section 90 of the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of January 13, 2018 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Should the Landlord recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement signed November 24, 2014. The agreement provided that monthly rent was payable in the amount of \$800.00 and was payable on the 24th of each month; specifically the agreement reads as follows:

Payment Due Date: same date of the week/month as start date

Start Date Nov. 24, 14 **End Date (if fixed)**

D.S. stated that at some point in time during his tenancy, the Landlord accepted rent payments from the Tenant on the first of the month. D.S. stated that for this reason, he waited until December 2, 2017 to issue the Notice as he wanted to give the Tenant until December 1, 2017 to pay the outstanding rent. I am satisfied, based on the evidence and testimony provided by the Landlord that the \$800.00 monthly payment is due on the 1st of the month.

D.S. stated that the Tenant paid a security deposit in the amount of \$300.00.

The tenancy agreement failed to note the address of the rental unit, and in particular the room which was rented to the Tenant. D.S. testified that the Tenant rents room #31; in support he also provided copies of the "Room Key Registration" which confirm that the rental unit in question is #31. I am satisfied, based on the testimony of D.S. as well as the evidence submitted by the Landlord that the address on the Notice matches the address of the rental unit subject to the tenancy agreement.

D.S. stated that the Tenant originally stopped paying rent in November of 2016. Attempts were made by the Landlord to proceed with evicting the Tenant, but for a variety of reasons, including incorrect dating on the first notice to end tenancy, and changes in management such that the second hearing date was cancelled, those attempts were unsuccessful. D.S. stated that he

then “started the whole process over” by issuing the Notice on December 2, 2017 noting that the amount of \$11,200.00 was due as of December 1, 2017.

Based on the filed Proof of Service—Notice to End Tenancy, I find that the Tenant was served with the Notice on December 2, 2017 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 pursuant to section 88, that the Tenant was served with the Notice as of December 5, 2017.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, December 10, 2017. 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.

D.S. confirmed that the Tenant did not pay the outstanding rent and did not make an application for dispute resolution by the strict five day deadline of December 10, 2017. D.S. stated that the Tenant also did not pay rent for January 2018.

Analysis

Based on the testimony and evidence before me, and on a balance of probabilities, I find as follows.

The Tenant has not paid the outstanding rent and did not apply to dispute the Notice within the five days mandated by section 47 of the *Act*, and is therefore conclusively presumed pursuant to section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Pursuant to 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 (2) days** after service on the Tenant. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

I grant the Landlord's request for recovery of the filing fee in the amount of \$100.00. Pursuant to section 72 of the *Residential Tenancy Act*, I authorize the Landlord to retain \$100.00 of the Tenant's \$300.00 security deposit as recovery of this amount.

The Landlord is at liberty to apply for further monetary compensation including compensation for unpaid rent. Should the Landlord make such an application, they must provide copies of any

prior Decisions of the Residential Tenancy Branch as it relates to this tenancy, including, but not limited to the two hearings referenced by D.S. in this hearing.

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 may retain \$100.00 of the Tenant's \$300.00 security deposit as compensation for the filing fee.

The Landlord is at liberty to apply for further monetary compensation.

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: January 25, 2018

Residential Tenancy Branch