



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: OPR, MNR, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and utilities as well as to recover the filing fee for this proceeding.

The Landlord said she served the Tenant on January 9, 2009 with a copy of the Application and Notice of Hearing by putting it through the door jamb of the rental unit. Section 89 of the Act says that an application for dispute resolution must be served either in person or by registered mail when applying for a monetary order. When applying for an Order of Possession only, an application for dispute resolution may also be served by leaving a copy at the Tenant's residence with another person who resides there or by attaching a copy to the door or another conspicuous place.

The Landlord said she believed the Tenant was at home but would not answer the door when she left the hearing package at his residence. Based on this evidence, I find the Tenant had notice of today's hearing and the hearing proceeded in his absence. However, as the Tenant was not served personally or by registered mail, the only matter that can be dealt with during this hearing is the Landlord's application for an Order of Possession. The Landlord will have to re-apply for a Monetary Order for any unpaid rent.

Issue(s) to be Decided

1. Are there arrears of rent and utilities and if so, how much?
2. Is the Landlord entitled to end the tenancy?

Background and Evidence

This tenancy started on July 1, 2008. Rent is \$1,000.00 per month payable on the 1st day of each month. The Landlord claimed the Tenant is in arrears of rent for November, 2008 in the amount of \$800.00 and for September and December, 2008 in the amount of \$100.00. The Landlord said she could not recall exactly when she served the

Tenant with the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated January 1, 2009. The Landlord's application filed on January 6, 2009 states that the Tenant was served with the Notice on December 31, 2008. The Landlord said she gave the Notice to the Tenant's girlfriend's mother who she says does not reside in the rental unit. The Landlord did not provide a copy of the Notice as evidence at the hearing however, she claimed it stated the amount of \$800.00 was in arrears that was due November 1, 2008.

The Landlord claimed that she spoke with the Tenant on the telephone as she was serving the Notice and he agreed to pay \$1,000.00 that day. The Landlord said the Tenant paid her son \$1,000.00 the same day the Notice was served. The Landlord claimed the \$1,000.00 payment was for January, 2009 rent and therefore argued that the amount of \$800.00 set out on the Notice is still in arrears.

Analysis

Section 88 of the Act sets out the ways in which a Notice to End Tenancy may be served. A document cannot be served on a Tenant by leaving it with another person at the Tenant's residence who does not also reside there. Even if I were to find that the Tenant received a copy of the 10 Day Notice, I find that the Notice is not enforceable for the following reasons.

A Notice to End Tenancy can only be enforced if it complies with the requirements of s. 52 of the Act. Without a copy of the Notice to End Tenancy that the Landlord served on the Tenant, I cannot conclude that the Notice is effective and therefore enforceable.

Furthermore, the Landlord claimed in her application that the 10 Day Notice to End Tenancy was served on the Tenant on December 31, 2008. Although the Landlord argued that the Tenant's payment of \$1,000.00 made that day was for January, 2009 rent, I find that probably was not the case. The Landlord's own evidence was that rent was not due until the 1st of each month and therefore rent for January, 2009 was not yet due.

The Landlord said she spoke to the Tenant on the telephone at the same time she delivered the Notice to End Tenancy and he agreed to pay \$1,000.00. As a result I find it more likely that the Tenant's \$1,000.00 payment was made for the purpose of paying the arrears of rent set out on the Notice and I find that part of the Tenant's \$1,000.00 payment made December 31, 2008 was for arrears of rent for November, 2008.

Section 46(4)(a) of the Act says that a 10 Day Notice to End Tenancy has no effect if the Tenant pays the overdue rent. I find that the Tenant paid the overdue rent for November, 2008 within 5 days of receiving the Notice and as a result, the 10 Day Notice dated January 1, 2009 is of no effect.

Conclusion

The Landlord's application for a monetary order is dismissed with leave to re-apply. If the Tenant has still not paid rent for January, 2009, then the Landlord must serve another 10 Day Notice to End Tenancy (in one of the ways set out in s. 88 of the Act) with respect to those rent arrears and may re-apply for an Order of Possession based on that Notice.