



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNR

OPR

MNSD

FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on the Notice to End Tenancy for Unpaid Rent dated May 15, 2009, a monetary order for rent owed and an order to retain the security deposit in partial satisfaction of the claim.

Although served with the Application for Dispute Resolution and Notice of Hearing in person on by posting the hearing Notice and evidence on the door on June 17, 2009 in the presence of a witness, the tenant did not appear

Preliminary Issue

The landlord's application for dispute resolution was seeking both a monetary order under section 67 and an order of possession under section 55.

Section 89(1) of the Act states that an application for dispute resolution, 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; or (e) as ordered by the director under section 71 (1).

I find that under the Act, the Notice of Hearing package and application, must be served by registered mail to the tenant or served in person to the tenant and can not normally be served by posting the documents on the door.

However, section 89(2) provides that an application by a landlord who is seeking an *Order of Possession* for the landlord under section 55, can validly be served to the tenant by attaching a copy to a door or other conspicuous place at the address at which the tenant resides.

Based on the testimony given by the landlord, I find that in regards to the landlord's request for a monetary order, the tenant was not properly served with this Application in compliance with Section 89(1) of the Act which required either in-person service or service by registered mail. I find that the portion of the landlord's application relating to the request for a monetary compensation for damages or loss under section 67, must therefore be dismissed with leave to reapply.

However, I find that the service effected by the landlord, in posting the notice on the tenant's door, was sufficient to proceed with the request for an Order of Possession under section 55 of the Act.

Issue(s) to be Decided

The landlord is seeking an Order of Possession and the issue to be determined based on the evidence is whether or not the landlord is entitled to an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent

Background and Evidence

The landlord submitted and I have reviewed the following evidentiary material:

- A copy of a residential tenancy agreement which indicated the tenancy commenced April 1, 2009 with two co-tenants who were required to pay rent of \$1,400.00 on the 1st day of every month.
- A copy of a *10 Day Notice to End Tenancy for Unpaid Rent and Utilities* (the 10 Day Notice) showing \$1,400.00 in unpaid rent which was issued on May 15, 2009 with an effective vacancy date of May 31, 2009.
- A copy of Proof of Service of the 10 Day Notice. The Proof of Service indicates the landlord posted the 10 Day Notice on the tenants' door on June 1, 2009 at 8:10 p.m. in the presence of a witness.
- The landlord's written submission dated June 22, 2009
- Copies of communications from the Strata Council
- Copies of communications between the landlord and tenant
- Photographs of the unit

The 10 Day Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The 10 Day Notice specifies that a Notice is deemed to be received three days after it is posted on the tenants' door.

The landlord testified that the tenancy began on April 1, 2009, at which time the tenant paid a security deposit of \$700.00 and a per damage deposit of \$100.00.. The landlord testified that the tenant failed to pay rent for the months of May, June, and July amounting to a total of \$4,200.00. The landlord testified that the landlord testified that the tenant has not paid nor has the tenant vacated the unit and the landlord has requested an Order of Possession.

Analysis

Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent by posting it on the door. The tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. Based on the above facts I find that the landlord is entitled to an Order of Possession two days after service on the tenant.

Conclusion

I hereby issue an Order of Possession in favour of the landlord effective two days after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to be reimbursed the cost of filing this application and I order that the landlord retain \$100.00 from the tenant's security deposit in payment for the fee. The remainder of the security deposit and the pet damage deposit must be administered according to section 38 of the Act.

The portion of the landlord's application requesting a monetary order for rent owed is dismissed with leave to reapply.

July 2009

Date of Decision

Dispute Resolution Officer