

DECISION

Dispute Codes OPR MNR FF

Preliminary Issues

The Agent advised that they had documented Tenant (2)'s name incorrectly on the notices to end Tenancy and on the application for dispute resolution as they listed an incorrect first name for Tenant (2). The Agent also advised that they were advised in mid December 2009 that female Tenant who is listed on the original application and the notices to end tenancy has vacated the rental unit.

The Agent confirmed that service of the December 2009 10 Day Notice and the 1 Month Notice to End Tenancy were served personally to Tenant (1) and not to Tenant (2).

The Agent requested to have the proceedings against Tenant (1) and to amend Tenant (2)'s name to the name provided in the Agent's testimony at today's hearing.

To find in favour of an application for an Order of Possession and a Monetary claim, I must be satisfied that the rights of all parties have been upheld by ensuring the parties have been given proper notice to be able to defend their rights. In this case I find that Tenant (2) has not been given proper notice of the claims against him as his legal name is not recorded on any of the legal documents. Therefore, as I have found the service of documents not to have been effected in accordance with the *Act*, I dismiss the Landlord's claim against Tenant (2), with leave to reapply and we will proceed with the Landlord's claim against Tenant (1).

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent, cause, and a Monetary Order for unpaid rent, to keep the security deposit, for money owed for compensation for damage or loss under the act, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to Tenant (1), was done in accordance with section 89 of the *Act*, sent via registered mail on December 24, 2009. Mail receipt numbers were provided in the Landlord's documentary evidence. Tenant (1) is deemed to be served the hearing documents on December 29, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlord's Agent (Agent) and Tenant (1) appeared, acknowledged receipt of evidence submitted by the other, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Has the Landlord proven entitlement to an Order of Possession and a Monetary Order under sections 38, 55, 67, and 72 of the *Residential Tenancy Act*?

Background and Evidence

The month to month tenancy agreement began on April 1, 2007 with the monthly rent payable on the first of each month in the amount of \$925.00. A security deposit of \$462.50 was paid on approximately April 1, 2007.

Tenant (1) testified that his current rent is \$925.00 and that he is responsible for paying the rent or arranging to have roommates to assist with paying the rent to the Landlord. Tenant (1) argued that his current roommate has his rent paid to the Landlord directly from the Ministry and that the Landlord refused to accept his roommate's rent for December 2009 because the Landlord said the tenancy was ending.

The Tenant argued that he has a receipt for his December 2009 rent which states that the outstanding balance for December 2009 is only \$75.00 and not \$1,000.00 as listed on the 10 Day Notice to End Tenancy.

The Agent testified that the rent is repeated paid late and that Tenant (1) has been personally served with several 10 Day Notices throughout the past months with the most recent notice being served on December personally to Tenant (1) on December 17, 2008 at 14:18 hrs. and a 1 Month Notice to End Tenancy for Cause served personally to Tenant (1) on November 20, 2009 at 18:22 hrs. The Agent referred to her documentary evidence in support of her testimony.

Tenant (1) confirmed receipt of the above mentioned notice however he could not testify to the dates he received the Notices.

The Agent confirmed that they did not submit evidence, other than the Notices, to substantiate their claim for unpaid rent however based on the Agent's records Tenant

(1) owes \$75.00 for November 2009, \$550.00 for December 2009, and \$925.00 for January 2010.

The Tenant argued that he had paid his rent in full for November 2009 and that he owes \$75.00 for December 2009. The Tenant confirmed that he has not paid anything towards January 2010 rent because the Landlord's Agent told him the tenancy was ending and the Landlord would not accept the rent.

The Agent argued that they do not advise Tenants not to pay the rent.

Twenty-seven minutes into the hearing Tenant (1) hung up and exited the hearing. The Agent remained on the line for approximately ten more minutes and Tenant (1) did not sign back into the hearing. No additional testimony was taken from the Agent and the hearing was ended.

Analysis

Order of Possession - I have reviewed all documentary evidence and accept that Tenant (1) has been served with the 10 Day Notice to End Tenancy for unpaid rent as declared by the Agent. The notice is deemed to have been received by Tenant (1) on December 17, 2009 and the effective date of the notice is December 27, 2009 pursuant to section 90 of the *Act*. I accept the evidence before me that Tenant (1) has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, I find that Tenant (1) is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice and I approve the Landlord's request for an Order of Possession.

Monetary Claim – The testimony received from Tenant (1) contradicts the Agent's testimony. In the absence of documentary evidence to substantiate the amount being claimed I find that the Agent has failed to prove their case for November and December 2009, unpaid rent. As per the aforementioned I hereby dismiss the Landlord's monetary claim against Tenant (1), without leave to reapply.

Filing fee - \$50.00. I find that the Landlord has partially succeeded with their claim and I award recovery of the filing fee from the Tenant (1).

The Tenants' security deposit is to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on Tenant (1)**. This order must be served on Tenant (1) and may be filed in the Supreme Court and enforced as an order of that Court.

A copy of the Landlord's decision will be accompanied by a Monetary Order for \$50.00. The order must be served on Tenant (1) and is enforceable through the Provincial Court as an order of that Court.

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: January 13, 2010.

Dispute Resolution Officer