



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 and monetary order for rent owed based on the Notice to End Tenancy for Unpaid Rent dated February 10, 2010.

Preliminary Issue

In regards to the serving the Notice of Hearing to the respondent tenant, the landlord advised that the Notice of Hearing was served by putting it through the mail slot.

Section 89 of the Act states that an application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, must be given to one party by another, 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*].

However, section 89(2) of the Act permits 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*] to also be served 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*].

In this instance, I find that for the purpose of the monetary order being sought, the landlord did not serve the tenant in compliance with the Act and therefore, the portion of the application relating to the monetary claim must be dismissed with leave to reapply.

However, I find that the matter of the Order of Possession can proceed as the documents had been properly served in accordance with the Act for that purpose.

Issue(s) to be Decided

The landlord is seeking an Order of Possession. The issues to be determined based on the testimony and the evidence are:

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 into evidence a copy of the 10-Day Notice to End Tenancy dated February 10, 2010 with effective date of February 18, 2010, a copy of the resident ledger, a copy of the tenancy agreement and copies of communications. The landlord testified that the tenancy began in December 2007 and no security deposit was charged. The landlord testified that the tenant failed to submit the required income disclosure forms and as a result the monthly rate reverted to the market rate of \$1,609.00. The landlord testified that the tenant did pay this amount but continued to pay \$390.00 each month for February, March and April 2010 incurring arrears of \$3,738.00. The landlord testified that the tenant has not 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. 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.

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 for the \$50.00 cost of this application and I grant a monetary order in favour of the landlord for \$50.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The portion of the landlord's application relating to the request for a monetary order for rent arrears is dismissed with leave to reapply in future.

April, 2010

Date of Decision

Dispute Resolution Officer