



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNR For unpaid Rent and Utilities

OPR Order of Possession

FF Recover the Filing Fee for this Application from the Respondent

Introduction

This Dispute Resolution hearing was held to deal with an application by the landlord for a monetary order for rent owed by the tenant and an Order of Possession based on the Ten-Day Notice to End Tenancy for Unpaid Rent dated February 8, 2010. The landlord was present but despite being served by posting of the Notice of Hearing, the tenant did not appear.

Preliminary Issue

Because the landlord was seeking a monetary order, and based on the testimony given by the landlord, I find that there is a concern about whether the tenant was properly served with this Application in compliance with Section 89 of the Act. This section states that an application for dispute resolution, when required to be served by the landlord to the tenant, must either 1) be given directly to the tenant in person or 2) sent by registered mail to the address at which the person resides or to a forwarding address provided by the tenant. In this instance the Notice of Hearing was posted on the tenant's door. This method of service would have been adequate if the dispute only dealt with a request for an Order of Possession.

The burden is on the Applicant to prove that the service was within the above provisions. As the landlord served the documents in a manner not permitted under

section 89 of the Act, I find that the Notice was not served for the purpose of a proceeding dealing with a monetary order.

Given the above, the matter under dispute cannot proceed because the tenant was not properly served. I therefore have no choice under the Act but to dismiss the portion of the application relating to the monetary claim with leave to reapply at a later date should the landlord wish to proceed with the monetary claim, once a service address has been located for the respondents to be served either by registered mail or in person.

However, section 89(2) of the Act permits an application by a landlord for an order of possession 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*].

Given the above, I find that the portion of the Application relating to the request for an Order of Possession to have been properly served.

Background and Evidence

The tenancy began in January 2010 with rent set at \$950.00 and a deposit of \$475.00 was paid and is still being held.

The landlord testified that the tenant failed to pay rent of \$950.00 owed for February and therefore on February 8, 2010, a Ten-Day Notice to End Tenancy for Unpaid Rent was posted on the door of the dispute address. The landlord testified that the tenant did not vacate and did not pay \$950.00 for March 2010 and the landlord has also incurred a loss of \$950.00 rent for the month of April. The landlord made application for dispute resolution seeking \$1,950.00 in rental arrears and the \$50.00 fee paid for filing the application and posted the Notice of hearing on the tenant's door on February 26, 2010. According to the landlord, the tenant has since vacated. However the landlord was still seeking an Order of Possession.

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.

Conclusion

I hereby dismiss the portion of the landlord's application seeking the monetary order, with leave to reapply. 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 enforced in the Supreme Court as an order of that Court.

I find that the landlord is entitled to be reimbursed for the cost of filing the application and I order that the landlord retain \$50.00 from the tenant's security deposit of \$475.00 in partial satisfaction of the claim leaving a remaining balance of \$425.00 to be held in trust.

April 2010

Date of Decision

Dispute Resolution Officer