



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession, a monetary order and to recover the filing fee.

The Landlord appeared, gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and make submissions to me.

The Landlord testified that he delivered the Application and Notice of Hearing documents to the Tenant by leaving the documents at the rental unit on January 9, 2011. Upon query, the Landlord testified that he thought the Tenant had vacated the rental unit when he delivered the documents, but was uncertain.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession?

Is the Landlord entitled to a monetary order?

Background and Evidence

Based on the affirmed testimony and evidence of the Landlord, I find that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on December 18, 2010, by posting on the door. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice. Documents delivered by posting on the door are deemed served on the third day after posting. Thus I note the effective date indicated on the Notice is ineffective and automatically corrects under the Act to December 31, 2010.

The Tenant did not apply to dispute the Notice.

The Landlord testified that the Tenant did not pay the monthly rent of \$850.00 listed on the Notice and has unpaid rent owing of \$4,550.00 as of January 2011.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

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.

I find that the Landlord is entitled to an order of possession effective **2 days** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

The *Act* states that service of a copy of the application must be made to the other party within 3 days of making it.

The Act and principles of natural justice require that the Tenant/Respondent be informed of the nature of the claim and the monetary amount sought against him. This is one of the many purposes of the Application for Dispute Resolution and the Notice of Hearing. Without being served, the Tenant/Respondent would easily have any Decision or Order made against him overturned upon Review.

Therefore, on a balance of probabilities, I find the Tenant has not been served with the Notice of Hearing and Application for Dispute Resolution. I **dismiss** the portion of the Landlord's Application for a Monetary Order for unpaid rent, with leave to reapply.

As the Landlord was successful in his application for an Order of Possession, I allow the Landlord to withhold \$50.00 from the security deposit of \$425.00.

Conclusion

The Tenant failed to pay rent and did not apply to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an Order of Possession.

The portion of the Landlord's Application for a Monetary Order is dismissed with leave to re-apply.

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 24, 2011.

Residential Tenancy Branch