



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, 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's Agent appeared, gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and make submissions to me.

The Landlord testified that she delivered the Application and Notice of Hearing documents to the Tenant by leaving the documents at the rental unit with the Tenant's daughter who does not live there, on January 18, 2011. The Tenant did not appear.

Issue(s) to be Decided

Has the Tenant breached the *Residential Tenancy Act* (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 January 3, 2011, 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 January 16, 2011.

The Tenant did not apply to dispute the Notice.

The Landlord's Agent testified that the Tenant did make payments of rents in January, 2011, in the amount of \$780.00 on January 14, 2011, and \$780.00 on January 17, 2011, with receipts being issued "For Use and Occupancy Only." The Landlord's Agent testified that the amount of current unpaid rent was \$200.00.

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.

Section 89 (1) (a) and (c) of the *Residential Tenancy Act* states that service of a copy of the application for dispute resolution must be delivered to the Tenant by leaving a copy with the person or by registered mail.

I accept that service of the application for dispute resolution was delivered to the Tenant in a manner consistent with Section 89 (2) (c) to allow the Landlord an order of possession; however 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 her.

This is one of the many purposes of the Application for Dispute Resolution and the Notice of Hearing. Without confirmation of being served, the Tenant/Respondent would easily have any Decision or Order made against her 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 under Section 89 (1) (a) and (c). 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 their application for an Order of Possession, I allow the Landlord to withhold \$50.00 from the security deposit of \$362.50 for the filing fee.

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: February 04, 2011.

Residential Tenancy Branch