



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 Tenant did not appear at the hearing, although the Landlord's Agent testified and provided evidence that one of the Tenants was served with the Notice of Hearing by registered mail on February 2, 2011.

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.

On a procedural note, I have addressed only one Tenant, as that name appears on the Application. However, the tenancy agreement and the Notice to End Tenancy list two Tenants; therefore any reference will be made to two tenants.

Issue(s) to be Decided

Have the Tenants breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Have the Tenants been properly served with the Notice of Hearing and Application for Dispute Resolution?

Background and Evidence

This tenancy began on March 15, 2008, monthly rent is \$1,490.00 and a security deposit of \$745.00 was paid on March 8, 2008.

The Landlord's Agent's affirmed testimony and evidence indicated that the Tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on

February 2, 2011, by posting on the door. The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenants had five days to dispute the Notice.

The Tenants did not apply to dispute the Notice.

The Landlord's Agent testified and supplied evidence that the Tenants owe unpaid rent for September 2010 through February 2011 in the amount of \$7,090.00, which includes a NSF charge.

The Landlord's Agent testified that the Notice of Hearing and Application was served via registered mail to Tenant AA only, as he is the main point of contact. The evidence and testimony showed that the Notice of Hearing has gone unclaimed as of the day of the hearing.

Analysis

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

The Tenants have not paid the outstanding rent and did not apply to dispute the Notice and are 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 Tenants. 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 the application for dispute resolution was delivered to the Tenants in a manner consistent with Section 89 (2) (b) to allow the Landlord an order of possession; however the Act and principles of natural justice require that **each** Tenant be informed of the nature of the claim and the monetary amount sought against them.

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 him/them overturned upon Review.

Therefore, on a balance of probabilities, I find the Tenants have 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 \$745.00 for the filing fee.

Conclusion

The Tenants failed to pay rent and did not apply to dispute the Notice to End Tenancy. The Tenants are 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 22, 2011.

Residential Tenancy Branch