



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 Landlords for an order of possession, a monetary order and to recover the filing fee.

The Landlords appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

The Landlords were unable to give clear testimony as to the delivery of the Application and Notice of Hearing documents to the Tenant.

Issue(s) to be Decided

Has the Tenant breached the Residential Tenancy Act (the "Act") or tenancy agreement, entitling the Landlords to an Order of Possession?

Are the Landlords entitled to a monetary order?

Background and Evidence

The submissions of the Landlords indicate that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on March 1, 2011, by leaving a copy at the Tenant's residence with an adult who apparently resides with the Tenant. 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 this method are deemed served on the third day after leaving the copy. Thus I note the effective date indicated on the Notice is ineffective and automatically corrects under the Act to March 4, 2011.

I have no evidence before me that the Tenant applied to dispute the Notice.

The Landlord testified that the Tenant did not pay the amount listed on the Notice, \$500.00, or the March 2011 rent of \$600.00.

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 Landlords are 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 her. 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 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. I **dismiss** the portion of the Landlords' Application for a Monetary Order for unpaid rent, *with leave to reapply*.

As the Landlords were successful in their application for an Order of Possession, I allow the Landlords to withhold \$50.00 from the security deposit.

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 Landlords are granted an Order of Possession.

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

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: March 17, 2011.

Residential Tenancy Branch