



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call to deal with the landlord's application for an Order of Possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenant for the cost of this application.

An agent for the landlord company attended the conference call hearing, gave affirmed testimony and provided evidence in advance of the hearing. The tenant also attended the hearing and provided affirmed testimony.

During the course of the hearing, the landlord withdrew the applications for a monetary order for unpaid rent or utilities and to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent or utilities?

Background and Evidence

This month-to-month tenancy began on September 1, 1997 and the tenant still resides in the rental unit. Rent in the amount of \$1,105.00 per month is payable in advance on the 1st day of each month, and there are currently no rental arrears. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$355.00.

The landlord's agent testified that the tenant failed to pay rent when it was due in May, 2011, and the resident manager served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit on May 2, 2011. A copy of the first page of the notice and a Proof of Service document were provided in advance of the hearing. The proof of service document has two sections completed.

The first section shows a checkmark beside: "By posting it on the Tenant's door" and the date is filled in to read May 2, 2011. The second section has been partially completed, but no checkmark appears beside: "By leaving it personally with," however the tenant's name has been filled in with a pen. The document is signed by the person who served it, but there is no tenant's acknowledgment. The landlord's agent stated that he believed it was posted to the door of the rental unit.

He further testified that the tenant paid the rent in full on May 10, 2011 and a receipt was issued that showed "For Use and Occupancy Only." A copy of that receipt was also provided in advance of the hearing.

The landlord's witness testified that she served the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on May 2, 2011 by posting it to the door of the rental unit. She stated that both sections of the Proof of Service document were completed because she found it easier to complete the personal service portion in the office and then have the tenant sign as acknowledging it at the time of service. However in this case, the tenant did not answer the door, and therefore she posted the notice to the door and placed a checkmark beside that box and did not complete the personal service portion because she did not personally serve it.

The tenant testified that he's been living in the rental unit for 14 years, and the landlord has always shown tolerance for late payments of rent, and the tenant has always shown tolerance for disturbances. He stated that he usually pays rent on the 5th of the month, but in May, 2011 he attempted to pay rent on the 6th and was not able to reach the resident manager to pay the rent. The tenant feels that since the landlord has not had an issue with paying the rent on or about the 5th of the month in the past, the tenant ought not to be evicted now. He stated he will always pay by the first of each month in the future.

Analysis

I have reviewed the evidence and accept the evidence of the landlord and the landlord's witness that the notice to end the tenancy was served on the tenant on the 2nd of May, 2011 by posting it to the door of the rental unit. The *Residential Tenancy Act* states that a notice served by posting is deemed to have been served 3 days after such posting. In this case, I find that the notice was deemed to have been served on the 5th of May, 2011. The tenant then had 5 days to pay the rent in full or dispute the notice. The tenant paid the rent in full within the 5 days, and pursuant to Section 46 of the *Residential Tenancy Act*, the notice has no effect. Therefore, the landlord's application for an Order of Possession cannot succeed.

Conclusion

For the reasons set out above, the landlord's application for an Order of Possession for unpaid rent or utilities is hereby dismissed.

The landlord's application for a monetary order for unpaid rent or utilities is hereby dismissed as withdrawn.

The landlord's application for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim is hereby dismissed as withdrawn.

The landlord's application for recovery of the filing fee from the tenant for the cost of this application is hereby dismissed without 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: June 10, 2011.

Residential Tenancy Branch