



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent as well as to recover the filing fee for this proceeding.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the "hearing package") on June 17, 2011 by posting a copy of it on the rental unit door. Section 89(2) of the Act says that an application for an Order of Possession may be served by posting it however s. 89(1) of the Act says that all other applications including an application for a Monetary Order must be served either in person or by registered mail. Consequently, I find that the Tenant was not properly served with the Landlord's application for a Monetary Order as required by s. 89 of the Act and that part of her application is dismissed with leave to reapply.

The Landlord's agent also admitted that there is a second Tenant who is a party to the tenancy agreement but who was not served with a copy of the Landlord's hearing package. RTB Rule of Procedure 13.6 says that a Dispute Resolution Officer may require that a tenant who is materially affected by the dispute resolution proceeding be given notice of the Application for Dispute Resolution. I find that the Tenant's co-tenant is materially affected by the Landlord's claim and that he should have received notice of the Landlord's application. However, for reasons set out below, I find that the Landlord will have to reapply for this relief in any event.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This fixed term tenancy started on July 1, 2010 and expired on July 1, 2011 (and in the absence of a provision in the tenancy agreement initialled by *both* parties that the Tenants must vacate) it is deemed to continue on a month-to-month basis thereafter. Rent is \$825.00 per month payable in advance on the 1st day of each month. The Landlord's agent said the Tenant had rent arrears for May 2011 of \$300.00 and did not pay rent for June 2011 when it was due. As a result, the Landlord's agent said on June 2, 2011 she served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or

Utilities dated June 2, 2011 by posting it on the rental unit door. The Landlord's agent said the Tenant made cash payments of \$300.00 on June 16, 2011 and of \$825.00 on July 1, 2011 for which she was issued receipts stating that the payments were accepted as "rent."

Analysis

It is a principle of common law that if a Landlord accepts a payment for "rent" (as opposed to "use and occupancy") from a Tenant after the 5 days granted under s. 46(4) of the Act for paying the arrears, then the Landlord is deemed to have reinstated the tenancy (see RTB Form124, *Reinstatement of Tenancies*) and the 10 Day Notice served on the Tenant will be unenforceable.

I find that the Landlord's agent served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on June 2, 2011 by posting it to the rental unit door. Pursuant to s. 90 of the Act, the Tenant is deemed to have received that document 3 days later or on June 5, 2011. I find that the Landlord's agent accepted 2 payments from the Tenant as "rent" after the 5 days granted under s. 46(4) for paying the arrears and therefore she is deemed to have reinstated the tenancy. Consequently, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 2, 2011 is cancelled.

Conclusion

The Landlord's applications for an Order of Possession and a Monetary Order for unpaid rent are dismissed with leave to reapply. The Landlord's application to recover the filing fee for this proceeding is 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: July 12, 2011.

Residential Tenancy Branch