



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession and a monetary order.

The landlord's agent appeared, gave affirmed testimony and was provided the opportunity to present her evidence orally and in documentary form, and make submissions to me.

The landlord testified that she delivered the Application and Notice of Hearing documents to the tenant by posting on the door of the rental unit on June 14, 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 and a monetary order for unpaid rent?

Background and Evidence

This six month, fixed term tenancy began on May 1, 2011, monthly rent is \$1,200.00 and a security deposit of \$600.00 was paid by the tenant on April 29, 2011.

The landlord's agent gave affirmed testimony and supplied evidence that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on June 2, 2011, via personal delivery. The Notice stated the amount of unpaid rent was \$1,200.00 as of June 1, 2011.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained the tenant had five days to dispute the Notice.

I have no evidence before me that the tenant applied to dispute the Notice. The landlord provided evidence and gave affirmed testimony that the tenant has not paid a rent payment since the Notice was issued and as of the day of the hearing, owed rent for June and July in the amount of \$2,400.00 in total and a pet damage deposit of \$300.00 the tenant failed to pay.

I note that the landlord also filed a 1 Month Notice to End Tenancy for Cause, but agreed that the hearing should proceed based upon the 10 Day Notice for Unpaid Rent.

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.

I am enclosing an order of possession with the landlord's Decision. This order is a **legally binding, final order**, and may be filed in the Supreme Court should the tenant fail to comply with this order of possession.

Section 89 (1) (a) and (c) of the *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) (d) 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 him.

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 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 for recovery of the filing fee.

Conclusion

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: July 08, 2011.

Residential Tenancy Branch