



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants – MT, CNR, MNR, RP, FF, O

For the landlords – OPR, MNR, FF

Preliminary Issues

The tenant testifies he served the landlord with Notice of this hearing and his application by posting it to the landlord's door. The landlord testifies this was not posted to the door and they only received a copy of the hearing letter by e-mail from the tenant. The tenant has provided no evidence to show the landlords were served in accordance with S. 88 of the *Residential Tenancy Act (Act)*. The Act also specifies that when serving the landlord with the application and Notice of hearing this cannot be posted to a door must be served in a manner specified under s. 88 of the Act consequently the tenant's application has not been heard today and is dismissed with leave to reapply.

Introduction

This matter therefore only dealt with an application by the landlords to obtain an Order of Possession for unpaid rent, a Monetary Order to recover unpaid rent and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was sent by registered mail to each of the tenants on September 01, 2011. Mail receipt tracking numbers were provided by the landlord for each tenant. The tenants

are deemed to be served the hearing documents on September 06, 2011, the fifth day after they were mailed as per section 90(a) of the *Act*.

Both parties appeared, gave sworn testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party and witness, and make submissions to me. On the basis of the solemnly sworn evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Are the landlords entitled to an Order of Possession?
- Are the landlords entitled to a Monetary Order for unpaid rent?

Background and Evidence

The evidence before me shows that this tenancy started on July 01, 2011. Rent for this unit is \$1,700.00 per month and is due on the 1st day of each month. This is a fixed term tenancy which is due to expire on June 30, 2012.

The landlord testifies that the tenants were given two free weeks rent at the start of their tenancy to pay for cleaning and minor repairs to the unit. On July 15, 2011 the tenants gave the landlord a cheque for the remainder of July to the sum of \$850.00. The landlord testifies that this cheque was returned to them as there were insufficient funds available on July 23, 2011. The landlord testifies the tenants failed to pay rent for August, 2011 and a 10 day Notice was served upon them on August 03, 2011. The landlord has provided a proof of service certificate which states the male tenant was served with the 10 day Notice in person on August 03, 2011 at 2.50 p.m. The landlord testifies the tenants paid \$1,200.00 on August 19, 2011. \$850.00 was for Julys outstanding rent and \$400.00 was towards rent for August. This payment was accepted

for use and occupancy only and the landlord has provided a copy of the receipt showing this in evidence.

The landlord calls her witness BT who is the person who served the tenant with the 10 Day Notice. This witness testifies that he went to the rental unit on August 03, 2011. A man came to the door and he asked his name. He states this man said he was the tenant and gave the tenants name and the witness states he served him with the 10 day Notice. He states he asked the man to sign the form to acknowledge receipt of the Notice but he refused to do so.

The tenant testifies that he did get the 10 Day Notice but he was not served with it in person. He cross examines the landlords witness and asks him to describe the man he served. The witness replies the man was about six feet tall with blond hair. The tenant testifies he is five foot eight and bald.

The landlord testifies the tenants failed to pay rent for September and they seek to amend their application to include the amount of \$1,700.00. The landlords also seek a Monetary Order for the amount of \$3,000.00, an Order of Possession and their \$50.00 filing fee.

The tenant attending disputes that they owe rent to the landlord. The tenant testifies the house was not provided in a condition that was fit to live in and they had no bathrooms, heat or working appliances. Because of this the tenant testifies they spent \$4,560.50 on repairs so they withheld their rent to the landlord for August and September, 2011.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witness. With regard to the tenants claim that he was not served with the 10 Day Notice to End Tenancy, I find the tenant agrees he did get the Notice and is

therefore sufficiently served with the 10 Day Notice for the purpose of the *Act* pursuant to s. 71(2) (c) of the *Act*.

The tenant does not dispute that they withheld rent however s. 26 of the *Act* states: *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.* As the tenant has not been given a right to withhold rent it is my decision that the landlords are entitled to recover rent arrears for August, 2011 of \$1,300.00. I also allow the landlords to amend their application to include unpaid rent for September, 2011 as the tenants continue to rent the unit and would be aware that rent is due on the first day of each month. Consequently, the landlords are entitled to recover unpaid rent to the total sum of **\$3,000.00** and I have issued a Monetary Order pursuant to s.67 of the *Act*.

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the outstanding rent within five days and applied to dispute the Notice on the sixth day after he was considered to be served with the Notice.

Based on the foregoing, I find that the tenants are conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an order of possession.

As the landlords have been successful in this matter, they are also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$3,050.00**. The order must be

served on the respondents and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective **two days** after service on the tenants. This order must be served on the Respondents and may be filed in the Supreme Court and enforced as an order of that Court.

The tenant's application 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: September 28, 2011.

Residential Tenancy Branch