



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession and Monetary Order for unpaid rent. The tenant did not appear at the hearing. The landlord provided a registered mail receipt as proof the hearing package was sent to the tenant at the rental unit on October 4, 2011. The landlord also testified that he posted the hearing package on the door of the rental unit on October 4, 2011. The landlord testified that although the registered mail was returned to him, he saw the tenant at the rental unit in early October 2011 and the rental unit continues to appear occupied. I was satisfied the tenant was served with the hearing package and I proceeded to hear from the landlord without the tenant present.

The landlord requested the application be amended to include unpaid rent for October 2011. I denied the landlord's request as I found the tenant not sufficiently notified that the landlord was claiming for unpaid rent for October 2011. The landlord remains at liberty to file another Application for Dispute Resolution for October 2011 loss of rent.

Issue(s) to be Decided

1. Has the landlord established an entitlement to an Order of Possession for unpaid rent?
2. Has the landlord established an entitlement to a Monetary Order for unpaid rent for September 2011?

Background and Evidence

The tenancy commenced in April 2011 and the tenant is required to pay rent of \$700.00 on the 1st day of every month. The tenant paid a \$350.00 security deposit. On September 12, 2011 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the door of the rental unit. The landlord observed the male occupant remove the Notice from the door. The tenant did not pay the outstanding rent or dispute the Notice.

By way of this application, the landlord is seeking a Monetary Order in the amount of \$700.00 for unpaid rent for September 2011. The landlord provided a copy of the Notice as evidence for this proceeding.

Analysis

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice. Since the Notice was posted on the door it is deemed to be received three days later and the effective date is automatically changed to read September 25, 2011 pursuant to section 53 of the Act.

Since the tenant did not pay the outstanding rent or dispute the Notice I find the tenancy ended on September 25, 2011 and the landlord is entitled to regain possession of the rental unit. Provided with this decision is an Order of Possession effective two (2) days after service upon the tenant.

I grant the landlord's request to recover unpaid rent for the month of September 2011 in the amount of \$700.00. I also award the landlord the filing fee paid for this application.

Since the landlord did not apply to retain the security deposit it remains in trust for the tenant, to be administered in accordance with the Act.

Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenant. The landlord has been provided a Monetary Order in the amount of \$700.00 to serve upon the tenant.

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: October 25, 2011.

Residential Tenancy Branch