



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

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

LH, an agent for the Landlord provided affirmed testimony that he personally served the Tenant, on November 16, 2011 with the Application for Dispute Resolution and Notice of Hearing. I find that the Tenant was served the Application and Notice of Hearing in accordance with section 88 of the Residential Tenancy Act (the "Act").

The Tenant did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter(s)

The Landlord made an oral request at the hearing to amend the Ten Day Notice to End Tenancy issued to the Tenant on November 04, 2011 to state that the outstanding rent is \$950.00 instead of \$900.00 as stated on the Notice. LH, an agent for the Landlord explained that she made a typographical error by putting \$900.00 on the Notice. The Landlord did not provide a copy of the tenancy agreement as evidence prior to the hearing. The Landlord requested that I refer to a previous claim they had made against the Tenant where a decision was made July 14, 2011, as the Landlord states they submitted a tenancy agreement into evidence for that prior claim and the decision would confirm the amount of monthly rent. The Landlord did not provide a copy of the decision as evidence prior to the hearing.

The Residential Tenancy Branch Rules of Procedures state the following with regards to evidence:

3.4 Evidence to be filed with the Application for Dispute Resolution

To the extent possible, the applicant must file copies of all available documents, photographs, video or audio tape evidence at the same time as the application is filed.

3.5 Evidence not filed with the Application for Dispute Resolution

- a) Copies of any documents, photographs, video or audio tape evidence that are not available to be filed with the application, but which the applicant intends to rely upon as evidence at the dispute resolution proceeding, must be received by the Residential Tenancy Branch and must be served on the respondent as soon as possible, and at least (5) days before the dispute resolution proceeding as those days are defined in the “Definitions” part of the Rules of Procedure.
- b) If the time between the filing of the application and the date of the dispute resolution proceeding does not allow the five (5) day requirement of a) to be met, then the evidence must be received by the Residential Tenancy Branch and served on the respondent at least two (2) days before the dispute resolution proceeding.
- c) If copies of the applicant’s evidence are not received by the Residential Tenancy Branch or served on the respondent as required, the Dispute Resolution Officer must apply Rule 11.6 [Consideration of evidence not provided to the other party or the Residential Tenancy Branch in advance of the dispute resolution proceeding].

If the Landlord wanted the error on the Notice to End Tenancy to be corrected, they had adequate time to do so by issuing a new Notice to the Tenant on November 04, 2011 or a later date. The Landlord failed to inform the Tenant on the Notice that any amount other than \$900.00 was owed to the Landlord for unpaid rent. By failing to provide a copy of the tenancy agreement, or any rent increase documents if applicable, in advance of the hearing I also have no way to confirm that the rent is \$950.00 instead of \$900.00 per month. It is not the responsibility of the Dispute Resolution Officer to seek out and obtain a copy of a previous decision or a file, when the Landlord could have provided the relevant decision or tenancy agreement contained in a file as evidence in advance of the hearing.

As a result, I decline to amend the Landlord’s Notice to End Tenancy to increase the amount owed by the Tenant.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an order of possession and a monetary order for unpaid rent?

Background and Evidence

The Landlord states that there is a written tenancy agreement between the parties that states that the tenancy commenced on December 01, 2010. The tenancy agreement was not provided as evidence. The Landlord states that the rent is \$950.00 per month due on the first of the month. The Landlord states that they hold a security deposit of \$475.00 paid by the Tenant at the time of his move in December 01, 2010.

The Landlord stated that they have had past problems with receiving rent on time from the Tenant and that they previously received an order of possession against the Tenant as a result of a decision made July 14, 2011. The Landlord stated that they had resolved the issue with the Tenant and they reinstated the tenancy and did not enforce the order of possession. The Landlord states that the Tenant gave them notice in October 2011 that he would be moving out in November 2011. The Landlord states the Tenant has not moved out and has informed them that he is not ready to do so. The Tenant has failed to pay his rent for November 2011.

LH, an agent for the Landlord testified that he served the Tenant with the 10 Day Notice to End Tenancy for Unpaid Rent by posting it on the Tenant's door on November 04, 2011 and that he was accompanied by a cleaner as a witness. The 10 Day Notice states that as of November 01, 2011 the Tenant owes the Landlord \$900.00 in unpaid rent.

The Landlord stated that the Tenant received the Notice and the Application for Dispute Resolution and has made promises to pay his rent, however he has not paid any of the outstanding rent as of the date of this hearing.

The Landlord is still requesting an order of possession and a monetary order for the outstanding rent.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the Landlord's evidence that the Tenant was properly served with the 10 Day Notice to End Tenancy for Unpaid Rent on November 04, 2011 in accordance with the Residential Tenancy Act (the "Act") and Policy Guideline.

As the Notice was posted on the Tenant's door, it was deemed to have been served by November 07, 2011, which is three days from the date posted. The Notice states that the Tenant had five days to pay the full amount of the outstanding rent, or apply for Dispute Resolution, or the tenancy would end from the service date. The Tenant did not pay the outstanding rent and did not apply to dispute the Notice to End Tenancy within five days from the date of service. The deadline to do so was November 12, 2011.

Although the Landlord indicated that the Tenant had until November 14, 2011 to vacate the premises, the earliest effective date is 10 days from the date of service, thus this is corrected to November 17, 2011 based on the service provisions set out in the Act and the Residential Tenancy Policy Guideline. I find that rent was not paid within five days and the Tenant did not file an Application to dispute the Notice.

Based on the foregoing, I find that the Tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on November 17, 2011, which is 10 days after the effective date of the Notice. Therefore, I find that the Landlord is entitled to an order of possession.

Section 26 of the Act requires a Tenant to pay rent when it is due under the tenancy agreement. In this case, the rent is due on the first of the month. I find that the Tenant failed to pay rent for November 2011 and did not vacate the rental unit within 10 days of service of the Notice. As a result, I find that the Landlord has established a monetary claim of \$900.00 based on the outstanding amount of rent indicated on the Notice.

I order that the Landlord retain the security deposit (\$475.00), in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$425.00**.

Conclusion

I find that the Landlord is entitled to an order of possession effective **two days after service** on the Tenant. This order must be served on the Tenant and may be filed in the Supreme Court.

I find that the Landlord may keep the security deposit in partial satisfaction of the claim and is granted a monetary order for the balance due in the amount of **\$425.00**. This order must be served on the Tenant and may be filed in the Provincial Court (Small Claims).

The orders accompany the Landlord's copy of this decision.

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: November 30, 2011.

Residential Tenancy Branch