



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was scheduled to deal with the landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and utilities and damage or loss under the Act, regulations or tenancy agreement. The tenants did not appear at the hearing. The landlord testified that two hearing packages were placed in one envelope and sent to both tenants via registered mail on October 21, 2011. The landlord verbally provided a tracking number as proof of service and stated that a search of the tracking number showed that Canada Post recorded the signatory name as both respondents.

Section 82 of the Act determines the method of service for documents related to a dispute resolution proceeding. The landlord has applied for a Monetary Order which requires that the landlord serve each respondent as set out under section 82(1). Based upon the evidence before me, I accept that the registered mail was successfully delivered; however, I am unable to determine which tenant received it. Therefore, I determined that I am unable to determine which tenant was served and I could not proceed with the landlord's monetary claim against either tenant. The landlord's monetary claims against the tenants are dismissed with leave to reapply.

In making an application for an Order of Possession, section 82(2) of the Act provides that a landlord may serve the tenant personally or by registered mail but section 82(2) also provides that a landlord may leave a copy of the Application for Dispute Resolution at the tenant's residence with an adult who apparently resides with the tenant. Based on the evidence before me, I am satisfied that one of the tenants received the landlord's Application for Dispute Resolution and, pursuant to section 64 of the Act, I deem both tenants sufficiently served for purposes of the landlord's application for an Order of Possession.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent or utilities?

Background and Evidence

On October 5, 2011 the landlord issued the tenants a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the Notice) and sent it to the tenants via registered mail the same day. The landlord provided a registered mail receipt and tracking information as proof of service. The tracking information shows the registered mail was successfully delivered on October 7, 2011. The Notice indicates that the tenants failed to pay rent of \$1,415.67 as of October 1, 2011 and utilities of \$170.25 that were demanded on October 1, 2011. The landlord testified that on November 1, 2011 \$448.25 was paid by the tenants. The landlord testified that they have tried setting up a payment plan with the tenants but the tenants have not complied by the landlord's request for \$50.00 partial payments. The landlord has also recognized yard work performed on the property by the tenant in the past but currently there is no work to be done by the tenant.

In support of this application the landlord provided the following documentary evidence:

- a written tenancy agreement that indicates the tenants are required to pay rent of \$392.00 plus \$56.75 in utilities on the 1st day of every month;
- a Notice of Rent Increase – Manufactured Home Park issued June 25, 2011 to increase the tenants' rent to \$406.42 effective October 1, 2011;
- the 10 Day Notice;
- the registered mail receipt and tracking information for service of the 10 Day Notice; and,
- a detailed accounting of the arrears balance.

Analysis

When a tenant receives a 10 Day Notice to End Tenancy for unpaid rent under section 39 of the Act, 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 39(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental site by the effective date of the Notice. Since the Notice was mailed to the tenants the effective date is automatically changed to read October 20, 2011 pursuant to section 46 of the Act.

Since the tenants did not pay the outstanding rent or dispute the Notice I find the tenancy ended October 20, 2011 and the landlord is entitled to regain possession of the rental site. Provided with this decision is an Order of Possession effective two (2) days after service upon the tenants.

I award the landlord the filing fee paid for this application. Provided with this decision is a Monetary order in the amount of \$50.00 to serve upon the tenants and enforce as necessary.

Conclusion

The tenancy has ended for unpaid rent and the landlord is provided an Order of Possession effective two (2) days after service upon the tenants. The landlord is awarded the filing fee paid for this application and is provided a Monetary Order for recovery of this fee from the tenants.

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 15, 2011.

Residential Tenancy Branch