

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1:43 p.m. in order to enable him to connect with this 1:30 p.m. hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

Issues(s) to be Decided

Has the landlord properly served his 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) and dispute resolution hearing package to the tenant? Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence- Service of Documents

The landlord entered into written evidence a witnessed Proof of Service document signed by his property manager. This document stated that the landlord's property manager posted the 10 Day Notice on the tenant's door at 1:00 p.m. on October 21, 2011. The landlord testified that a copy of the landlord's dispute resolution hearing package was posted on the tenant's door on November 19, 2011.

Analysis – Service of Documents

I am satisfied that the landlord's property manager served the 10 Day Notice to the tenant in accordance with the *Act*.

Section 89 of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution for a monetary Order:

89(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 71(1) [director's orders: delivery and service of document]...*

As the landlord has not served the tenant with his application for a monetary Order in a manner required by section 89(1) of the *Act*, I am not satisfied that the tenant was properly served with the landlord's application for dispute resolution. For these reasons, I dismiss the landlord's application for a monetary Order with leave to reapply.

However, the Special Rules for serving the landlord's application for an Order of Possession falls under section 89(2) of the *Act*. Section 89(2)(d) allows a landlord to serve a copy of an application for an end to a tenancy and an Order of Possession pursuant to section 55 of the *Act* by posting a copy to the tenant's door. As such, I find that the landlord's application for an end to this tenancy and an Order of Possession was properly served to the tenant and is properly before me.

Background and Evidence – Landlord's Application for an Order of Possession

The landlord was unclear as to when this periodic tenancy commenced. He testified that the tenant was living in this rental unit when the landlord purchased this rental property three years ago. He testified that the monthly rent is set at \$200.00, payable in advance on the first of each month. The landlord is unaware of any security deposit paid by the tenant for this tenancy.

The landlord entered into written evidence a copy of the 10 Day Notice. In this Notice, the landlord sought \$470.00 in rent and late fees that were owing as of October 5, 2011. The landlord testified that this amount was for unpaid rent for September and October 2011 and \$35.00 late fees for both months. The landlord applied for a monetary Order of \$905.00, to cover unpaid rent for two additional months.

At the hearing, the landlord testified that his property manager received \$470.00 in rent from the tenant that was identified as owing in a cash payment on December 4, 2011. I

asked on what basis the landlord's property manager received this payment and if a receipt had been issued. The landlord reiterated that this payment was for rent and late fees owing as set out on the 10 Day Notice. He said that he had no information about any receipts issued to the tenant. The landlord said that the tenant also owes for November and December 2011 rent.

Analysis - Landlord's Application for an Order of Possession

Since the landlord testified that the tenant's payment for outstanding rent identified in the 10 Day Notice was received after the effective date of the landlord's 10 Day Notice, I find that the landlord's acceptance of the outstanding rent continued this tenancy. As such, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession.

Since the landlord's application has been unsuccessful, I dismiss the landlord's application to recover his filing fee for his application.

Conclusion

I dismiss the landlord's application for a monetary Order with leave to reapply.

I dismiss the landlord's application to end this tenancy and obtain an Order of Possession based on the 10 Day Notice of October 21, 2011. The effect of this decision is that this tenancy continues.

I dismiss the landlord's application to recover his filing fee for this application.

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: December 07, 2011

Residential Tenancy Branch