



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession, a monetary order for unpaid rent and recovery of the filing fee, and an order to keep all or part of the security deposit.

The Landlord testified that she served Tenant CH in person on January 17, 2012, at the rental unit accompanied by a witness, with the Application for Dispute Resolution and Notice of Hearing. The Landlord's witness testified at the hearing that she was present when the Landlord served Tenant CH on January 17, 2012 at 2:25 PM with the Application and Notice of Hearing. I find that Tenant CH was served the Application and Notice of Hearing in accordance with section 89 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 stated that in their Application they had requested the rent for February 2012, but wished to withdraw this from the Application as this is premature based on the hearing date. The Landlord also wished to withdraw their request for a late fee for December 2011 rent from their Application. The Landlord requested at the hearing to amend their Application to only claim for the rent for January 2012 (\$850.00), a late fee for January 2012 (\$25.00), the filing fee (\$50.00) and to keep the security deposit towards the outstanding amounts. As a result, I have amended the Landlord's Application accordingly.

In advance of the hearing, the Landlord faxed in a written request to amend the Application to correct the spelling of the Tenant's name to CH, and to correct the suite number for the rental unit. The Landlord and the Landlord's witness gave testimony that this was discussed with Tenant CH at the time the Application and Notice of Hearing were served on her at the rental unit.

Pursuant to section 64(3) of the Act I am granting the Landlord's request to amend the Application to reflect the correct spelling of the Tenant's name, CH, and the correct suite number for the rental unit.

The Landlord made an Application for dispute resolution naming Tenant CH and Tenant TM as respondents. The Landlord testified that Tenant TM was not at home when they went to the rental unit to personally serve the Application and Notice of Hearing package; as a result they left the documents with the other Tenant, CH.

I find that the Landlord has failed to serve Tenant TM with the Application and Notice of Hearing as required by section 89 of the Act. The Act allows where an order of possession is issued to only one tenant all other occupants must also vacate the rental unit. However, with regards to the monetary claim, I find that any monetary orders resulting from this hearing will only be issued against Tenant CH who was properly served with the Application and Notice of Hearing package.

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 and recovery of the filing fee?

Background and Evidence

The signed tenancy agreement between the parties was submitted in the evidence by the Landlord. The tenancy commenced on June 01, 2011, and rent is due on the first day of the month in the amount of \$850.00. The tenancy agreement states that a \$25.00 late fee is owed if the Tenant fails to pay the rent when it is due. The Tenant paid the Landlord a security deposit of \$425.00 when the tenancy commenced.

The Landlord testified that the Tenant failed to pay the rent which was due on January 01, 2012 and a Ten Day Notice to End Tenancy was issued to the Tenant for non-payment of rent. The Landlord submitted a copy of the Ten Day Notice to End Tenancy into evidence.

Based on the testimony of the Landlord and the Landlord's witness the Ten Day Notice to End Tenancy for Unpaid Rent was posted on the door of the rental unit on January 03, 2012 at 5:01 P.M. This Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. This Notice also explains the Tenant had five days to dispute the Notice. This Notice advised the Tenant that they must vacate the rental unit on January 13, 2012. The Landlord testified that the Tenant received the Notice and contacted them to state that they would be moving out; however, they have not paid the rent and they have not moved out as of the date of this hearing. The Tenant did not file an Application to dispute the Notice.

The Landlord filed an Application for Dispute Resolution on January 13, 2012 and received a Notice of Hearing package on January 16, 2012. The Landlord stated that they personally delivered the Application and Notice of Hearing package to the Tenant, CH, at the rental unit on January 17, 2012. The Landlord's witness confirmed this service at the hearing. The Landlord stated that they discussed with the Tenant that there were two errors on the Notice, one error was the spelling of the Tenant's name and the other error was the rental unit number. The Landlord stated that they informed the Tenant that they would make the correction to the spelling of her name and the rental unit number and would be at the hearing on the date stated on the Notice. The Landlord stated that they faxed a written request into our office to amend the Application and make the corrections in advance of the hearing.

The Landlord testified that the Tenant has not moved out of the rental unit and owes \$850.00 rent for January 2012. The Landlord requests an order for the outstanding rent as well as an order of possession of the rental unit. The Landlord has applied to keep all or part of the security deposit towards the unpaid rent.

The Landlord has also applied for reimbursement of the \$50.00 filing fee for this proceeding.

Analysis

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

The Notice was served on January 03, 2012 by the Landlord posting it on the door at the rental unit with a witness present. The Act states that a Notice served by posting is deemed served in three days (January 06, 2012). I accept the Landlord's evidence that the Tenant was properly served with the Ten Day Notice to End Tenancy for Unpaid Rent in accordance with the Act and Policy Guideline.

I have reviewed all documentary evidence and considered the Landlord's testimony and I accept the evidence and testimony that the Tenant has failed to pay the rent owed by January 09, 2012, which is within five days of the deemed service date, pursuant to section 46 (4) of the Act, and the Tenant has not vacated the rental unit.

Although the Notice to End Tenancy has incorrectly spelled the name of Tenant CH, I find that the Notice is still valid as the rental unit number and address on the Notice to End Tenancy is correct and the rest of the Notice is correct. The Act allows this type of error to be corrected without invalidating the Notice. I find the Notice to End Tenancy is valid.

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 ten days after the effective date of the Notice. Although the Notice stated that the Tenant was to vacate the rental

unit by January 13, 2012, this corrects based on the service method and date to January 16, 2012. I find that the Landlord is entitled to an order of possession.

I find that the Tenant is aware that she is in arrears for the rent for January 01, 2012 in the amount of \$850.00. I also find that the tenancy agreement contains a late fee of \$25.00 for unpaid rent, as allowed by the Act and Regulation. As a result, I find that the Landlord has established a monetary claim of \$875.00.

As the Landlord has succeeded in their Application, I find that the Landlord is entitled to recover the \$50.00 fee for this proceeding. I have added this amount to the monetary order against the Tenant bringing the total amount owing to \$925.00

I order that the Landlord retain the security deposit (\$425.00), in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$500.00**.

Conclusion

I find that the Landlord is entitled to an order of possession effective **two days after service** on the Tenant.

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 **\$500.00**.

The orders accompany the Landlord's copy of this decision. The orders must be served on the Tenant and may be filed in the Supreme Court.

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: January 31, 2012.

Residential Tenancy Branch