



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNDC, MNR, O, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession due to unpaid rent, authority to retain the tenants' security deposit, a monetary order due to unpaid rent and recovery of the filing fee.

The landlord appeared, gave affirmed testimony and was provided the opportunity to present his evidence orally and in documentary form, and make submissions to me.

The landlord testified that he delivered the Application and Notice of Hearing documents to the tenants by registered mail on January 17, 2012; however the landlord stated that he placed two copies of the documents in the same envelope. The tenants did not appear for the conference call hearing.

Issue(s) to be Decided

Have the tenants breached the *Residential Tenancy Act* (the "Act") or tenancy agreement, entitling the landlord to an order of possession and a monetary order for unpaid rent?

Background and Evidence

This month to month tenancy began on November 1, 2010, monthly rent is \$1,180.00 and a security deposit of \$560.00 was paid by the tenants on or about November 1, 2010.

The landlord agent gave affirmed testimony and supplied evidence that the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on January 6, 2012, by posting on the door. The Notice stated the amount of unpaid rent was \$1,180.00 as of January 1, 2012.

The Notice informed the tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explained the tenants had five days to dispute the Notice.

I have no evidence before me that the tenants applied to dispute the Notice. The landlord provided evidence and gave affirmed testimony that the tenants have not paid a rent payment since the Notice was issued and as of the day of the hearing.

Analysis

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

The tenants were deemed served the Notice three days after posting on the door, which is January 9, 2012, have not paid the outstanding rent and did not apply to dispute the Notice. I find the tenants are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I accept that service of the application for dispute resolution was delivered to the tenants in a manner consistent with Section 89 (2) (d) to allow the landlord an order of possession.

I therefore find that the landlord is entitled to an order of possession effective **2 days** after service on the tenants.

I am enclosing an order of possession with the landlord's Decision. This order is a **legally binding, final order**, and may be filed in the Supreme Court for enforcement should the tenant fail to comply with this order of possession.

Section 89 (1) (a) and (c) of the *Act* states that service of a copy of the application for dispute resolution must be delivered to the tenant by leaving a copy with the person or by registered mail. In other words, the Act and principles of natural justice require that each tenant be served individually, in separate envelopes, in order to be informed of the nature of the claim made against them. In this case, the landlord placed the application for dispute resolution in the same envelope.

Without confirmation of being served, the tenants/respondents would easily have any Decision or Order made against them overturned upon Review.

Therefore, I find the landlord failed to establish that tenants have been served with the Notice of Hearing and Application for Dispute Resolution under Section 89 (1) (a) and (c) necessary for a monetary order. I **dismiss** the portion of the landlord's Application for a Monetary Order for unpaid rent, **with leave to reapply**.

As the landlord was successful in their application for an Order of Possession, I allow the landlord to withhold \$50.00 from the security deposit for recovery of the filing fee.

Conclusion

The landlord is granted an Order of Possession.

The portion of the landlord's Application for a Monetary Order is dismissed with leave to re-apply.

The landlord may withhold \$50.00 from the tenants' security deposit for recovery of the filing fee.

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: February 01, 2012.

Residential Tenancy Branch