



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD FF

Preliminary Issues

At the outset of the hearing the Landlord confirmed that he had reversed the female Tenant's first and last name when he typed them onto his application for dispute resolution. He stated that he wished me to correct this in the style of cause of this decision.

After consideration of the aforementioned, I have reversed the female Tenant's name in the style of cause to ensure they are recorded in the correct order, pursuant to section 64 (3)(c) of the Act that stipulates the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, to keep the security deposit and to recover the cost of the filing fee from the Tenants for this application.

Service of the hearing documents, by the Landlord, was done personally on March 16, 2012 at 3:30 p.m. when the Landlord personally served the male Tenant both hearing packages (both the female and male Tenant's hearing documents) at the rental unit in the presence of a witness. Based on the written and oral submissions of the Landlord I find that the male Tenant was sufficient served notice of this proceeding in accordance with section 89 of the Act.

The Landlord appeared at the teleconference hearing and gave affirmed testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me. No one appeared on behalf of the Tenants despite the male Tenant being personally served Notice of this proceeding in accordance with the Act.

Issue(s) to be Decided

1. Have the Tenants been issued and served a 10 Day Notice to end tenancy in accordance with section 46 of the act?

2. If so, has the Landlord met the burden of proof to obtain a Monetary Order and an Order of Possession pursuant to sections 55 and 67 of the Act?

Background and Evidence

The Landlord confirmed he entered into a written fixed term tenancy agreement with the female Tenant and a different male Tenant that began on December 1, 2009 and switched to a month to month tenancy after December 31, 2010. On August 11, 2010 a written amendment to the tenancy agreement was signed adding another male Tenant to the tenancy who is the named respondent to this dispute. Rent is payable on the first of each month in the amount of \$1,500.00 and on November 15, 2009 the Tenants paid \$750.00 as the security deposit.

The Landlord affirmed that he had been previously issued an Order of Possession and a Monetary Order through the Direct Request Process. However, when the Landlord was out of the Country the Tenants applied for a review and attended a new hearing. During the re-hearing the Landlords did not appear so the Dispute Resolution Officer dismissed "the claim" and "No findings were made with respect to the merits of the matter under dispute".

The Landlord advised that it has now been five months with the Tenants not paying rent so he issued another 10 Day Notice on February 16, 2012 and posted it to the Tenants' door. The Landlord referenced the photograph he provided in evidence to prove he attached the 10 Day Notice to the Tenant's door and their signed statement of service of the hearing packages because he is concerned the Tenants will be granted another review to prolong this matter further and cause him to lose more rent.

The Landlord is seeking an Order of Possession for as soon as possible and a Monetary Order for the five months unpaid rent of \$7,500.00 plus the filing fee of \$100.00.

Analysis

I have carefully considered the aforementioned, the previous decision on file # 786523 dated February 16, 2012, and the documentary evidence which included, among other things, a copy of the 10 Day Notice, a photograph of the Notice taped to the rental unit door, a copy of the written proof of service document, the tenancy agreement and amendment, and a copy of the Tenants' NSF cheque dated February 15, 2012.

Based on the testimony and written submission of the Landlords, I find that the Male Tenant has been served with the Notice of Dispute Resolution Proceeding documents in

accordance with section 89 of the Act for purposes of a Monetary Order and an Order of Possession.

Section 89(1) of the *Residential Tenancy Act* and Section 3.1 of the *Residential Tenancy Rules of Procedures* determines the method of service for documents. The Landlords have applied for a monetary Order which requires that the Landlords serve **each** respondent as set out under *Residential Tenancy Rules of Procedures*. In this case only one of the two Tenants has been personally served with the Notice of Dispute Resolution documents. Therefore, I find that the request for a Monetary Order against both Tenants must be amended to include only the Male Tenant who has been properly served with Notice of this Proceeding. As the second Tenant has not been properly served the Application for Dispute Resolution as required, the monetary claim against the Female Tenant is dismissed without leave to reapply.

Section 89(2)(c) of the Act stipulates that an application by a landlord under section 55 [*order of possession for the landlord*], may be served by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant. Therefore I find the Female Tenant has been sufficiently served notice of this hearing for the Landlords' application for an Order of Possession.

Where a tenant is served a 10 Day Notice 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 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

In this case I find the 10 Day Notice was served to the Tenants on February 16, 2012 when it was posted to the Tenant's door. The Notice is deemed to have been received by the Tenants on February 19, 2012, three days after it was posted to their door, pursuant to section 90 of the Act. Accordingly I find the effective date of the Notice is February 29, 2012, pursuant to Section 90 of the Act. Since the Tenants did not pay the outstanding rent or dispute the Notice I find the tenancy ended on February 29, 2012. Accordingly, I award the Landlord an Order of Possession.

The Landlord claims for unpaid rent of \$6,000.00 which is comprised of rent at \$1,500.00 per month for November 2011, December 2011, January 2012, and February 2012, (4 x \$1,500.00) pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that the Tenants have failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of

each month. Accordingly I award the Landlord a monetary claim in the amount of **\$6,000.00** (4 X \$1,500.00) for unpaid rent.

The Landlord has also applied for rent for March 2012 as the Tenants continue to occupy the rental unit. Based on the aforementioned I find this tenancy ended February 29, 2012, pursuant to section 44 of the Act, and therefore the Landlord is entitled to loss of rent for March 2012 in the amount of **\$1,500.00**.

The Landlord has been successful with their application; therefore I award recovery of the **\$100.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim against the Male Tenant and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Unpaid Rent (Nov 2011; Dec 2011; Jan & Feb 2012)	\$6,000.00
Loss of March 2012 Rent	1,500.00
Filing Fee	<u>100.00</u>
SUBTOTAL	\$ 7,600.00
LESS: Security Deposit \$750.00 + Interest 0.00	<u>-750.00</u>
Offset amount due to the Landlord	<u>\$6,850.00</u>

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenants**. This Order is legally binding and must be served upon the Respondent Tenant.

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$6,850.00**. This Order is legally binding and must be served upon the Male Tenant.

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: March 28, 2012.

Residential Tenancy Branch