



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and loss of rent. The tenant did not appear at the hearing. The landlord provided a registered mail receipt as proof the hearing documents were sent to the tenant at the rental unit address on May 17, 2012. The landlord's agent testified that she witnessed Canada Post place a notification card on the door of the rental unit when he refused to open the door. A search of the tracking number shows that the mail has not yet been claimed by the tenant. The landlord's agent confirmed that the tenant continues to occupy the rental unit.

The Act deems a document to be served five days after mailing even if the recipient chooses to not accept or pick up the mail. I was satisfied the tenant was sufficiently served with the hearing documents and I proceeded to hear from the landlord's agent without the tenant present.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid rent and/or loss of rent?

Background and Evidence

The landlord's agent provided the following undisputed evidence:

- The tenant is required to pay rent of \$425.00 on the 1st day of every month;
- The tenant failed to pay rent for April 2012 or May 2012;
- On May 2, 2012 the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) at the rental unit, in the presence of his daughter as a witness;
- After serving the notice the tenant did not pay the outstanding rent or dispute the Notice; and,
- The tenant continues to occupy the rental unit and has not paid any monies for June 2012.

In addition to an Order of Possession, the landlord is seeking to recover unpaid rent and loss of rent for the months of April, May and June 2012 in the amount of \$1,275.00.

The landlord provided a copy of the tenancy agreement; 10 Day Notice; and, registered mail receipt and tracking information as evidence for this proceeding.

The 10 Day Notice indicates the tenant failed to pay \$850.00 as of May 1, 2012 and has a stated effective date of May 11, 2012.

Analysis

When a tenant receives 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.

The Notice has a stated effective date of May 11, 2012 which does not comply with the requirements of the Act. Accordingly, the effective date automatically changed to read May 12, 2012 pursuant to section 53 of the Act.

Since the tenant did not pay the outstanding rent or dispute the Notice I find the tenancy ended on May 12, 2012 and the landlord is entitled to regain possession of the rental unit. Provided with this decision is an Order of Possession effective two (2) days after service upon the tenant.

The Act requires that a tenant pay rent when due in accordance with their tenancy agreement. Upon consideration of the undisputed evidence before me, I find the landlord entitled to recover unpaid rent for April 2012 and May 2012 from the tenant. I also award the landlord loss of rent for the month of June 2012 since the tenant continues to occupy the rental unit.

As the landlord was successful with this application I award the \$50.00 filing fee to the landlord.

In light of the above, the landlord is provided a Monetary Order in the total amount of \$1,325.00 to serve upon the tenant. To enforce the Monetary Order it must be served

the Monetary Order upon the tenant and it may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The landlord is provided an Order of Possession effective two (2) days after service upon the tenant. The landlord is provided a Monetary Order in the amount of \$1,325.00 to serve upon the tenant and enforce as necessary.

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: June 06, 2012.

Residential Tenancy Branch