



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession and Monetary Order for unpaid rent. The tenant did not appear at the hearing. The landlord testified that the hearing documents were sent to the tenant at the rental via registered mail on May 18, 2012. The landlord verbally provided a registered mail tracking number as proof of service and testified that the tenant is still residing in the rental unit and the registered mail was not returned. I was satisfied the landlord sufficiently served the tenant in a manner that complies with the Act and I proceeded to hear from the landlord without the tenant present.

At the commencement of the hearing the landlord testified that the tenant has since paid the outstanding rent. The landlord requested that an Order of Possession be provided with this decision.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

The landlord submitted that the tenancy began January 17, 2005 and the current monthly rent is \$938.00 payable on the 1st day of every month. The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) indicating the rent of \$938.00 for the month of May was outstanding. The Notice was signed on May 3, 2012, has a stated effective date of May 13, 2012 and indicates it was posted on the door.

The landlord testified that he personally posted the Notice on the tenant's door on May 2, 2012. The Application for Dispute Resolution indicates the Notice was posted on May 2, 2012. When I pointed out that the Notice was signed on May 3, 2012 the landlord responded by stating there must be a typographical error on the Application for

Dispute Resolution and he changed his testimony to state the Notice was posted on the tenant's door on May 3, 2012.

The landlord testified that the tenant paid \$950.00 on May 25, 2012 and was issued a receipt for "use and occupancy only."

The landlord provided a copy of the 10 Day Notice as documentary evidence.

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.

In the absence of disputed testimony from the tenant, I accept that the Notice was posted on the tenant's door on May 3, 2012. Since the Notice was posted, it is deemed to be received by the tenant three days later. Accordingly, the effective date is automatically changed to read May 16, 2012 pursuant to section 53 of the Act.

As the tenant did not pay the outstanding rent or dispute the Notice within five (5) days of receiving the Notice I find the tenancy ended on May 16, 2012. Since the landlord issued a receipt for "use and occupancy only" for May 2012 I am satisfied the landlord did not reinstate the tenancy. Therefore, I find the landlord entitled to regain possession of the rental unit on May 31, 2012. Given the date of this decision the landlord is provided an Order of Possession effective two (2) days after service upon the tenant.

I award the filing fee to the landlord and I authorize the landlord to deduct \$50.00 from the tenant's security deposit in satisfaction of this award.

Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenant. The landlord has been authorized to deduct \$50.00 from the tenant's security deposit to recover the filing fee paid 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: May 30, 2012.

Residential Tenancy Branch