



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNR, OPR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on the Notice to End Tenancy for Unpaid Rent dated June 9, 2012 and a monetary order for rent owed. On July 5, 2012, the landlord amended the application to also include a claim for July rent, for which a second Ten Day Notice to End Tenancy for Unpaid Rent was issued.

The landlord appeared and the tenant also appeared along with a supporter to speak on her behalf.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are:

Whether or not the landlord is entitled to an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent

Whether or not the landlord is entitled to monetary compensation for rental arrears owed.

Preliminary Issue

The tenant's spokesperson stated that they did not get adequate notice of the hearing and asked to have the matter adjourned on this basis.

The landlord testified that the tenant was properly served by registered mail sent on June 27, 2012. The landlord provided the tracking number.

Canada Post Records confirmed that the package was sent and that attempted delivery was made on June 28, 2012. The records indicated that a card was left directing where the item could be picked up. However by July 3, 2012, the tracking data showed nobody had come to retrieve the registered mail and there was a notation that it would be held at the post office for 10 more days before being returned to sender.

Section 89 of the Act states that an application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, must be given to one party by another, in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord; or
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord; (my emphasis).

I find that the landlord did serve the Notice of Hearing and Application to the tenant by registered mail and that this was served in compliance with the Act.

I note that section 90 of the Act provides direction for *when* a document is deemed to have been served, as follows:

- (a) if given or served by mail, on the 5th day after it is mailed; (my emphasis)
- (b) if given or served by fax, on the 3rd day after it is faxed;
- (c) if given or served by attaching a copy of the document to a door or other place, on the 3rd day after it is attached;
- (d) if given or served by leaving a copy of the document in a mail box or mail slot, on the 3rd day after it is left.

I find that, according to the Act, the hearing package mailed on June 27, 2012, is deemed to be received on July 2, 2012.

As this hearing was scheduled for July 16, 2012, I find that the tenant had 2 weeks Notice that the landlord would proceed with a hearing to enforce the June 9, 2012 Ten Day Notice to End Tenancy for Unpaid Rent.

With respect to the request for adjournment, I find that Rule 6.1 of the Rules of Procedure states that the Residential Tenancy Branch will reschedule a dispute resolution proceeding if *“written consent from both the applicant and the respondent is received by the Residential Tenancy Branch before noon at least three (3) business days before the scheduled date for the dispute resolution proceeding.”*

In this instance, the tenant did not approach the other party seeking their agreement for an adjournment.

In some circumstances proceedings can be adjourned after the hearing has commenced. However, the Rules of Procedure contain a mandatory requirement that the Dispute Resolution Officer must look at the oral or written submissions of the parties; consider whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1 [objective and purpose]; consider whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding; and weigh the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and assess the possible prejudice to each party.

In this instance, I found that the oral submissions alleging inadequate notice of the hearing, had no merit because the tenant had two weeks to prepare for the hearing.. Furthermore, I determined that the adjournment sought would not contribute to the resolution of the matter because the 5-day deadline for either paying the arrears or making an application to dispute the Notice, had already expired on June 14, 2012 and this is a fact that could not be altered, even with an adjournment. In addition, I found that the stated need for the adjournment actually arose because the person seeking the adjournment, namely the tenant, had neglected to dispute the Notice within the 5-day deadline, neglected to pay the outstanding rent and even failed to retrieve the registered mail notification of the hearing. Finally, I find that an adjournment would unfairly prejudice the other party who had not received rent for two months to date and should not be forced to wait any longer to proceed. The applicant declined to consent to an adjournment in any case.

Accordingly, I found that there was not sufficient justification under the Act and Rules of Procedure to support imposing an adjournment on the other unwilling party. The respondent tenant's request for an adjournment was therefore denied. The hearing then proceeded as scheduled.

Background and Evidence

The landlord testified that the tenancy started in January 2012 with rent set at \$825.00 per month. A security deposit of \$412.50 was paid. The landlord testified that the tenant paid rent without incident for January, February, March, April and May 2012. The landlord testified that the tenant failed to pay \$825.00 rent due on June 1, 2012, so the landlord issued a Ten Day Notice to End Tenancy for Unpaid Rent on June 9, 2012 and served it to the tenant in person.

The landlord testified that the tenant then failed to pay the \$825.00 rent owed on July 1, 2012 and the landlord issued a second Ten Day Notice to End Tenancy for Unpaid Rent

on July 2, 2012. According to the landlord, after trying to serve this in person without success, the Notice was then posted on the tenant's door.

The landlord testified that, after the tenant failed to satisfy the arrears within the five-day deadline, an application for dispute resolution was filed seeking an order of possession based on the Notice and a monetary order for rental arrears.

The tenant's spokesperson argued on behalf of the tenant, that neither of the Ten Day Notices to End Tenancy for Unpaid Rent were ever served on the tenant. The tenant's spokesperson also argued that the tenant had attempted to pay both June and July rent but the payments were refused by the landlord. Moreover, the tenant's spokesperson stated, on behalf of the tenant, that there was a problem with the tenant's source of income that delayed the payment of rent. According to the tenant, although she does not have this overdue rent money at the moment, she can and will bring the arrears up-to-date if the landlord would agree to grant 5 more days to get the money by June 20, 2012 and not proceed with the eviction.

The landlord testified that the Ten Day Notices to End Tenancy for Unpaid Rent were both properly served on the tenant. The landlord denied refusing offers of payment allegedly made by the tenant. The landlord is also not willing to forgo their request for an Order of Possession and a monetary order based a stated promise to pay all arrears in full within 5 days. The landlord is requesting the Order of Possession and monetary compensation pursuant to the Ten Day Notices to End Tenancy for Unpaid Rent.

Analysis

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement. Through testimony from both parties it has been established that the tenant did not pay the rent when it was due. I find that the tenant's testimony explaining why the rent was not paid to be irrelevant to this dispute.

When a tenant fails to comply with section 26, then section 46 of the Act permits the landlord to end the tenancy by issuing a Ten-Day Notice effective on a date that is not earlier than 10 days after the date the tenant receives it. This section of the Act also provides that within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, to cancel the Notice, or to dispute the Notice by making an application for dispute resolution. In this case I do not accept the tenant's testimony that payment was attempted but refused by the landlord.

The Ten-day Notice included written instructions on page 2 informing the respondent about how and when a tenant may dispute the notice if the claim is not being accepted.

In this instance I find that the tenant was in arrears at the time the Notice was served on June 9, 2012 and the tenant did not pay the arrears within 5 days. In fact, the tenant failed to pay rent for the following month as well.

In any case, section 46(5) of the Act provides that, if a tenant does not pay the rent or make an application for dispute resolution in accordance with the above, then the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

Given the above, this tenant is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ends on the effective date shown on the Notice. Accordingly, I find that the landlord is entitled to an Order of Possession.

I find that the landlord has established a total monetary claim of \$1,700.00 comprised of \$1,650.00 rent owed for June and July 2012 and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the security deposit of \$412.50 in partial satisfaction of the claim leaving a balance due of \$1,287.50.

Conclusion

I hereby issue an Order of Possession in favour of the landlord effective two days after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I hereby grant the Landlord an order under section 67 for \$1,287.50. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that 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: July 16, 2012.

Residential Tenancy Branch