



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNR, MNSD, OPR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on the Ten Day Notice to End Tenancy for Unpaid Rent, a monetary order for rent owed and the cost of filing the application.

Although served with the Application for Dispute Resolution and Notice of Hearing by having it posted on the door by the landlord on July 23, 2012, the tenant did not appear.

Preliminary Matter

At the outset of the hearing the landlord testified that the landlord posted the Notice of Dispute Resolution Hearing on the tenant's door as the landlord did not have the tenant's mailing address and the tenant was not responding to attempts to personally serve the tenant.

Sections 88 and 89 of the Act determine the method of service for documents. The Tenant has applied for a Monetary Order under section 38 and 67 of the Act which requires that the landlord serve the tenant as set out under **Section 89(1)**. This requires service in one of the following ways:

- (a) **by leaving a copy with the person, (personal service);**
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (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;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*]. (my emphasis)

However **section 89(2)** does permit an application by a landlord under section 55 [*order of possession for the landlord*], to be served, in addition to the other methods, by attaching a copy to a door or other conspicuous place at the address at which the tenant resides. (My emphasis)

In this instance, I find that the landlord chose to post the Notice of Hearing on the tenant's door. I find that this method of service would only comply with the Act for the purpose of the order of possession, and is not adequate service for an application for a monetary order.

Accordingly, I find that the portion of the landlord's application relating to the monetary order was not properly served in compliance with the Act and must be dismissed. However, the hearing will proceed with respect to the landlord's request for an Order of Possession only.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence is whether or not the landlord is entitled to an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent

Background and Evidence

The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy dated July 2, 2012. The landlord testified that the tenancy began on June 1, 2010, at which time the tenant paid a security deposit of \$325.00. The landlord testified that the current rent is \$698.00 and when the tenant failed to pay on July 1, 2012, the tenant was served with a Ten-Day Notice by posting it on the door on July 2, 2012. The landlord testified that, in early August, the tenant finally paid the rent owed for July 2012 and it was accepted by the landlord for use and occupancy only. The tenant testified that the tenant was advised that the payment did not reinstate the tenancy. The landlord is requesting an Order of Possession.

Analysis

Based on the testimony of the landlord, I find that the landlord properly served the tenant with a Notice to End Tenancy for Unpaid Rent. The tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. Based on the above facts I find that the landlord is entitled to an Order of Possession.

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 the cost of the application in the amount of \$50.00 which the landlord can retain from the tenant's \$325.00 security deposit. The remaining deposit of \$275.00 must be dealt with in accordance with section 38 of the Act.

The monetary portion of the landlord's application is dismissed with leave to reapply.

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: August 16, 2012.

Residential Tenancy Branch