



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1:45 p.m. in order to enable him to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

Preliminary Issues – Service of Documents

The landlord testified that he handed a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) to the tenant's 19-year old daughter at the tenant's residence on July 12, 2012. I am satisfied that the 10 Day Notice was served in accordance with section 88(e) of the *Act*.

The landlord testified that he handed a copy of his dispute resolution hearing package to a mature adult roommate of the tenant, J.R. on August 25, 2012.

Section 89(1) of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution seeking a monetary Order:

89(1) An application for dispute resolution,...when required to be given to one party by another, must be given 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;*

- (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 document]...*

By handing the landlord's dispute resolution hearing package to the tenant's roommate, the landlord has not served the tenant in a manner required by section 89(1) of the *Act*. As I am not satisfied that the tenant was properly served with the landlord's application for a monetary Order in accordance with section 89(1) of the *Act*, I dismiss the monetary components of the landlord's application with leave to reapply.

Section 89(2) of the *Act* allows a landlord to serve an application for dispute resolution seeking an Order of Possession pursuant to section 55 of the *Act* "by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant." I am satisfied that the landlord has served his application for an Order of Possession in accordance with section 89(2)(c) of the *Act*. As such, I am willing to consider the portion of the landlord's application for dispute resolution that pertains to his requested Order of Possession for unpaid rent.

Issues(s) to be Decided

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

Background and Evidence

This periodic tenancy commenced on July 12, 2012. Monthly rent is set at \$875.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$350.00 security deposit.

The landlord's 10 Day Notice issued on July 12, 2012 cited \$1,200.00 in outstanding rent at that time. The landlord testified that the tenant deposited \$400.00 into the landlord's bank account on July 20, 2012 to be applied towards these outstanding arrears. He also testified that the tenant has subsequently made additional on-line deposits into the landlord's bank account in the amounts of \$40.00 and \$268.00 on July 31, 2012, \$425.00 on August 1, 2012, \$850.00 on September 1, 2012, and \$425.00 on September 7, 2012. The tenant's deposits in August and September 2012 have been applied to the original arrears identified in the 10 Day Notice and rent that became due on August 1 and September 1, 2012. At present, the landlord said that \$492.00 remains outstanding from this tenancy. The landlord also entered into written evidence

a lengthy tenant rent ledger in which the amounts owing and paid were outlined since November 1, 2011. Since all of these payments were received directly into his bank account as per the payment process arranged between the parties, the landlord has not issued receipts for the payments received since July 12, 2012.

Analysis

The tenant failed to pay the amount identified as owing in the 10 Day Notice within five days of receiving that Notice. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days resulted in the tenant's deemed acceptance that his tenancy ended on the effective date of the 10 Day Notice.

In this case, the tenant has continued to make payments to the landlord's bank account. While some of these payments have been relatively minor, others have been sizeable. The landlord provided no evidence that he has accepted these payments for anything other than rent considered owing. He has not issued receipts alerting the tenant that his payments were being accepted for use and occupancy only and that the landlord's acceptance of these payments did not constitute a reinstatement of the tenancy that was to have ended on July 22, 2012, the effective date identified on the 10 Day Notice. Since July 22, 2012, the landlord has accepted five payments from the tenant. By making these payments and not receiving any written document from the landlord advising him to the contrary, I find that the tenant reasonably believed that the landlord had reinstated his tenancy. I note in particular that the tenant paid \$850.00 on September 1, 2012 and a further \$425.00 on September 7, 2012. These actions seem more in line with a tenant who believed that his payments were being applied to his rent by the landlord and that the landlord had reinstated his tenancy.

The landlord may still have reason to issue a new notice to end this tenancy for unpaid rent or for cause. However, I do not find that the landlord is entitled to an Order of Possession on the basis of the 10 Day Notice issued on July 12, 2012. Since that time, the landlord has accepted repeated payments from the tenant which I find in the absence of evidence to the contrary have been applied to the original rental arrears and rent that has become due for August and September 2012. For these reasons, I dismiss the landlord's application to end this tenancy on the basis of the 10 Day Notice without leave to reapply. I find that the landlord has effectively reinstated this tenancy.

Under these circumstances, I find that the landlord is responsible for his filing fee.

Conclusion

I dismiss the landlord's application for an end to this tenancy and an Order of Possession based on the 10 Day Notice without leave to reapply. As the landlord has been unsuccessful in this application, the landlord bears the costs of the filing fee for this application.

I dismiss the landlord's claim for a monetary award for unpaid rent and for authorization to retain the tenant's security deposit 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: September 26, 2012

Residential Tenancy Branch