



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MNR, 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 and for breach of a material term of the tenancy agreement pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1:44 p.m. in order to enable him to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord's representatives attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

Landlord Representative VP (the landlord) testified that the tenant abandoned this rental unit on or about September 12, 2012. As such and since the landlord already has possession of this rental unit, the landlord withdrew the application for an Order of Possession. The landlord's application for an end to this tenancy and an Order of Possession is withdrawn.

The landlord testified that two 10 Day Notices to End Tenancy for Unpaid (the 10 Day Notices) were placed under the tenant's door on August 2, 2012 and September 2, 2012 respectively. Although this method of serving 10 Day Notices is not allowed under the *Act*, the landlord's failure to provide proper service of these documents is of no consequence, given the landlord's withdrawal of the application for an Order of Possession.

Issues(s) to be Decided

Has the landlord served the tenant with the dispute resolution hearing package in accordance with the *Act*? If so, is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence – Service of Landlord's Dispute Resolution Hearing Package

The landlord testified that he sent the tenant a copy of the landlord's dispute resolution hearing package to the tenant's last known address at the rental unit on September 13, 2012. He provided the Canada Post Tracking Number to confirm this mailing.

Analysis – Service of Landlord's Dispute Resolution Hearing Package

Section 89(1) of the *Act* establishes the following special rules for serving an application for dispute resolution in which a monetary award is sought from a tenant:

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]...*

According to sections 89 and 90 of the *Act*, the tenant would have been deemed to have been served with the landlord's dispute resolution hearing package on the fifth day after its mailing on September 18, 2012, if it had been sent to the address at which the tenant then resided.

Based on the sworn testimony of the landlord's representatives at this hearing, the tenant abandoned this rental unit on September 12, 2012, after the landlord prepared the application for dispute resolution on September 6, 2012, but before the landlord sent the tenant a copy of the dispute resolution hearing package by registered mail on September 13, 2012. By that date, the landlord was aware that the tenant no longer resided at that address. The landlord's representatives also testified that the tenant had abandoned the rental unit without leaving a forwarding address.

Under these circumstances, I find that the landlord has not served the tenant with the dispute resolution hearing package in a manner required by section 89(1) of the *Act*. However, by providing me with the Canada Post Tracking Number, the landlord enabled and invited me to check the Canada Post On-Line Tracking System in order to confirm the landlord's sworn testimony with respect to service of the dispute resolution hearing package. I learned from that On-Line Tracking System, that the landlord did send the

tenant the dispute resolution hearing package on September 13, 2012, as claimed by the landlord during the hearing. The On-Line Tracking System also revealed that the landlord's hearing package was delivered successfully to the tenant on September 14, 2012, at which time the tenant signed for receipt of the landlord's hearing package. Under these circumstances and in accordance with the provisions of the *Act*, I find that the tenant did receive the landlord's dispute resolution hearing package on September 14, 2012 and is considered to have been served with the landlord's hearing package in accordance with the *Act*.

Background and Evidence - Landlord's Application for a Monetary Award for Unpaid Rent

The landlords testified that this tenancy began in 2006, prior to the current landlord's purchase of this property. Monthly rent as of August 2012 was set at \$929.00, payable in advance on the first of the month. By September 1, 2012, the monthly rent had increased to \$968.00, again payable on the first. Landlord AA gave sworn testimony that no security deposit is held by the landlord for this tenancy.

The landlord's original application for dispute resolution of September 6, 2012 sought a monetary award of \$989.00 then owing for unpaid rent. At the hearing, the landlord's representatives testified that the tenant made no further payments after the 10 Day Notice of September 2, 2012 was issued. The landlords testified that an August 17, 2012 cheque issued by the tenant for \$954.00 was returned to the landlord on August 30, 2012 as N.S.F. The landlord submitted a copy of the N.S.F. statement to that effect and requested a monetary award of \$954.00 to reflect the tenant's failure to provide a valid payment for August 2012.

At the hearing, the landlords requested an additional monetary award of \$968.00 for the rent that became due on September 1, 2012, plus a \$25.00 late fee to be applied to that rent for the tenant's failure to pay his September 2012 rent on time. Under the circumstances, I allowed the landlords to seek an increased monetary award as the landlord's awareness of the N.S.F. cheque was such that the true amount of rent owing may not have been known to the landlord at the time of the issuance of the application for dispute resolution.

Analysis – Landlord's Application for a Monetary Award for Unpaid Rent

Based on the undisputed evidence presented by the landlord, I find that the landlord is entitled to a monetary award of \$954.00 for August 2012, \$968.00 for September 2012, and a \$25.00 late fee for September 2012, to be added to the amount of rent owing. I am satisfied that the landlord attempted to the extent that was reasonable to re-rent the premises to another tenant and in this way mitigate the tenant's losses for

September 2012, in accordance with section 7(2) of the *Act*. The tenant's sudden departure on or about September 12, 2012, left the landlord with little prospects for finding a new tenant for this rental unit for the remainder of September 2012. Landlord AA testified that the landlord advertised the availability of this rental unit immediately and has been able to show the suite to two prospective tenants. As of the date of this hearing, the landlord remains unable to find a new tenant for this rental unit.

Conclusion

The landlord's application for an end to this tenancy and an Order of Possession is withdrawn.

I issue a monetary Order in the landlord's favour under the following terms which allows the landlord to recover unpaid rent and the filing fee for this application:

Item	Amount
Unpaid Rent Owing from August 2012	\$954.00
Unpaid Rent and Late Fee Owing from September 2012 (\$968.00 + \$25.00 = \$993.00)	993.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$1,997.00

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: October 15, 2012

Residential Tenancy Branch