



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent or utilities and to obtain a Monetary Order for unpaid rent or utilities.

Issue(s) to be Decided

1. Should the Landlord be granted an Order of Possession?
2. Should the Landlord be granted a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence in support of his claim which included, among other things, copies of the original tenancy agreement, a 10 Day Notice to end tenancy for unpaid rent, a schedule of other party's names listing the occupants in the rental unit, and a copy of a receipt issued August 24, 2012 for "use and occupancy only" issued to the rental unit for cash received through the mail slot.

The Landlord affirmed that he served each Tenant with the Notice of Dispute Resolution hearing documents via registered mail that was sent to the rental address. He noted that he had knowledge that the Tenants had vacated the property and that they had left occupants residing in the unit since approximately July 2012. He argued that these occupants were not approved tenants and that he never established a tenancy with them as the money he received was for use and occupancy only and was put towards rental arrears on the Tenants' account.

The Landlord confirmed that on September 6, 2012 he personally served one of the occupants with the 10 Day Notice for unpaid rent of \$1,530.00 that was due as of September 1, 2012.

Analysis

Based on the testimony of the Landlord, the Tenants have vacated the property leaving occupants residing in the unit who have not paid rent and who have not entered into a tenancy agreement with the Landlord.

Section 89(2)(c) of the Act provides that when applying for an Order of Possession the Application and Hearing Documents may be served by leaving a copy at the tenant's residence with an adult who apparently resides there. As the hearing documents were served to the rental unit address, which is the last known address of the Tenants, and there are occupants residing in the unit and not paying rent, I find that service of the hearing documents for an application for an Order of Possession may be considered sufficient in this case, pursuant to section 71 of the *Act*.

I have reviewed all documentary evidence and accept that an adult who resides at the rental unit has been served with notice to end tenancy as declared by the Landlord. The notice was received on September 6, 2012, and the effective date of the notice is September 16, 2012, pursuant to section 90 of the *Act*. I accept the evidence before me that the Tenants have failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, I find that the Tenants are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice and I hereby grant the Landlord an Order of Possession.

Section 89(1) of the *Residential Tenancy Act* and Section 3.1 of the *Residential Tenancy Rules of Procedures* determines the method of service for documents for monetary claims which requires that the Landlord serve **each** respondent as set out under *Residential Tenancy Rules of Procedures*.

In this case neither Tenant has been served with the Notice of Dispute Resolution documents that would meet the requirements to proceed with a monetary claim. Therefore, I find that the request for a Monetary Order cannot proceed and it is dismissed with leave to reapply.

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service**. This Order is legally binding and may be enforced through Supreme 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 19, 2012.

Residential Tenancy Branch