



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, MNR

Introduction

This matter was conducted by way of Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the "Act"), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession and a monetary order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 21, 2012 the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail to the rental unit address. The landlord provided a Canada Post receipt and tracking number as evidence of service. Section 90 of the Act determines that a document is deemed to have been served on the 5th day after mailing.

Based on the written submissions of the landlord, I find that the tenant has been served with the Direct Request Proceeding documents.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession?

Is the landlord entitled to monetary compensation for unpaid rent?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the tenant;
- A copy of a residential tenancy agreement which was signed by the parties on October 23, 2012, indicating a monthly rent of \$750.00 due on the first day of the month;
- A ledger showing payments and work credits applied to rent owed; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on November 9, 2012 with a stated effective vacancy date of November 19, 2012, for \$110.00 in unpaid rent "portion."

Documentary evidence filed by the landlord indicates that the tenant has failed to pay rent owed and was served the 10 Day Notice to End Tenancy for Unpaid Rent by personal delivery to the tenant's adult brother, who resides with the tenant. The Notice was given to "K." on November 19, 2012; a note signed by "K" acknowledging receipt of the Notice, was supplied as evidence. The Act deems the tenant was served on the day of personal delivery to the adult with whom she apparently resides.

The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not apply to dispute the Notice to End Tenancy within five days from the date of service.

The landlord submitted that the tenant paid \$30.00 on November 12, 2012 and that a balance in the sum of \$80.00 is owed for November rent.

The ledger supplied as evidence indicated:

"\$520.00 rent for October 23 to December 1st, 2012. Agreed on \$60.00 barter payment and \$460.00 cash payment to be paid by November 1, 2012."

The ledger also indicated:

"receipt for damage deposit of \$200.00 for (address) \$200.00 rent due on November 1, 2012, agreed on work barter...November 1, 2012 Deposit Due," in the sum of \$200.00."

Evidence before me shows that "K." has been given cash payments for yard work and that yard work credits have also been applied to rent owed.

The ledger document also showed a balance of credit in the sum of \$80.00, less \$78.00 credit paid towards a damaged table; with \$4.00 owed to "K."

Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord.

The Notice is deemed to have been received by the tenant on November 19, 2012.

I have considered the evidence before me and am unable to determine what, if any rent, was owed within 5 days of November 19, 2012. The ledger indicted that effective November 1, 2012 rent owed was \$520.00; and, that a cash payment in the sum of \$460.00, only, was owed. It also appears that a \$200.00 security deposit was added to

the ledger that included the recording of rent paid owed, and credits applied for yard work.

In the absence of a clear, understandable record of rent owed I find that the Notice issued on November 9, 2012, is unenforceable. It appears the landlord has co-mingled a tenancy with yard work deductions; I find that the records supplied fail to support the claim made in the sum of \$80.00. From the evidence before me it appears that the tenant and "K." may well be owed \$4.00; however, it is impossible to determine, based on the evidence supplied.

I find there was an absence of evidence in support of the claim that \$110.00 rent was owed, as indicated on the Notice, within 5 days of service of the Notice ending tenancy and that it was reasonable that the tenant did not apply to dispute the Notice.

Further, if, as it appears, the landlord has added the amount owed for a security deposit, the total amount the landlord believes is owed as rent may be incorrect. If a tenant fails to pay a deposit owed, a 1 Month Notice to end tenancy contemplates that situation.

Therefore, I find that the application is dismissed; the Notice is of no force and effect and the tenancy will continue until it is ended in accordance with the Act; which may include a decision by the tenant to vacate the unit. The landlord is at liberty to issue another Notice and to seek compensation, based on evidence, for any unpaid rent owed from November 20, 2012, onward.

Conclusion

The application is dismissed; the tenancy will continue.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 27, 2012.

, Arbitrator
Residential Tenancy Branch