



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OPR, OPC, MNR, MND, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking authority to retain the tenant's security deposit, for an order of possession due to unpaid rent and for alleged cause, a monetary order for unpaid rent and damage to the rental unit, and for recovery of the filing fee.

The tenants did not appear at the telephone conference call hearing. The landlord's agent appeared and gave affirmed testimony.

The landlord testified that each tenant was served with the Application for Dispute Resolution and Notice of Hearing (the Hearing Package) by registered mail on September 28, 2012. The landlord supplied the tracking number for the registered mail envelopes. Section 90 of the Act states that documents served in this manner are deemed received five days later.

The landlord's agent said that the tenants have vacated the rental unit and no longer requires an order of possession; I have therefore amended their application excluding such a request.

Issue(s) to be Decided

Is the landlord entitled to a monetary order and to recover the filing fee?

Background and Evidence

This tenancy began on March 11, 2012, monthly rent is \$1100.00, and a security deposit of \$550.00 was paid by the tenants at the beginning of the tenancy.

The landlord stated that he was uncertain of the date the tenants vacated the rental unit, but guessed the date was between September 20 and 25, 2012, as there was no activity on the tenants' bar code for the residential property building beyond those dates.

The landlord gave evidence that on August 6, 2012, the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by registered mail, listing unpaid rent of \$1100.00 as of September 1, 2012. The effective vacancy date listed on the Notice was August 16, 2012.

The Act states that documents served by posting on the door are deemed received five days later. Thus the Notice was deemed served on August 11, 2012, and the effective move out date is automatically changed to August 21, 2012.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days or in the alternative, the tenant had five days to dispute the Notice. In the event the tenant fails to do either, they are presumed to have accepted the tenancy ends on the effective date of the Notice and must vacate the rental unit.

I have no evidence before me that the tenants applied to dispute the Notice and the landlord confirmed that the tenants had not paid rent.

Analysis and Conclusion

Based on the oral and written evidence and on a balance of probabilities, I find as follows:

Section 89 of the Residential Tenancy Act requires that an application for dispute resolution be served upon the respondent (the tenants in this case) by leaving it with the person, by sending a copy by registered mail to the address at which the person resides or if a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant.

In the case before me, as the tenant failed to pay rent or dispute the Notice, the tenancy was conclusively ended by operation of the landlord's Notice on the effective date of the Notice, August 21, 2012.

The landlord served the Hearing Package to the tenant via registered mail on September 28, 2012 to the address of the rental unit.

As the landlord was uncertain of the date the tenant vacated the rental unit, therefore, on a balance of probabilities and insufficient evidence by the landlord, I cannot find that the tenants were served with the Notice of Hearing and Application for Dispute Resolution as required by Section 89 of the Act.

I therefore dismiss the landlord's application, with leave to reapply.

Leave to reapply does not extend any applicable time limitation deadlines.

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 31, 2012.

Residential Tenancy Branch