



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNR, OPR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on the Notice to End Tenancy for Unpaid Rent dated October 9, 2012, a monetary order for rent owed, an order to retain the security deposit in partial satisfaction of the claim and reimbursement for the cost of filing the application.

Although the tenant was served with the Application for Dispute Resolution and Notice of Hearing by having it posted on the door of the rental unit, on October 18, 2012, the tenant did not appear.

Preliminary Matter

At the outset of the hearing the landlord testified that the landlord posted the Notice of Dispute Resolution Hearing on the tenant's door.

Sections 88 and 89 of the Act determine the method of service for documents. The landlord has applied for a Monetary Order under section 38 and 67 of the Act which states that the landlord must serve the tenant as set out under Section 89(1). This requires service in one of the following ways:

- (a) **by leaving a copy with the person, (personal service);**
- (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 documents]*. (my emphasis)

Although an application for dispute resolution seeking a monetary order must be served as described above, Section 89(2) does permit an application by a landlord under section 55 seeking an order of possession for the landlord, to be served by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant or by attaching a copy to a door or other conspicuous place at the address at which the tenant resides, as well as personally or by registered mail.

In this instance, I find that the landlord chose to post the Notice of Hearing on the tenant's door. I find that this method of service would comply with the Act for the purpose of the order of possession, but is not considered adequate service to proceed with a claim and an application for a monetary order.

Accordingly, the portion of the landlord's application relating to the monetary order was found not to be properly served in compliance with the Act and must be dismissed. However, the proceeding pertaining to the landlord's request for an Order of Possession will proceed.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent?

Background and Evidence

The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy dated October 9, 2012 with effective date of October 19, 2012. The landlord testified that the tenancy began on December 1, 2011, at which time the tenant paid a security deposit of \$397.50. The landlord testified that the current rent is \$795.00 and the tenant fell into arrears accruing a debt for the months of September and October 2012 in the amount of \$1,590.00 and was served with a Ten-Day Notice. The landlord testified that the tenant has also failed to pay the \$795.00 rent owed for November 2012. The landlord testified that the tenant has not vacated the unit and the landlord has requested an Order of Possession.

Analysis

Based on the testimony of the landlord, I find that the landlord properly served the tenant with a Notice to End Tenancy for Unpaid Rent by posting it on the tenant's door on October 9, 2012. The tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. Based on the above facts I find that the landlord is entitled to an Order of Possession.

I hereby issue an Order of Possession in favour of the landlord effective two days after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I hereby grant the Landlord the cost of the application in the amount of \$50.00 which the landlord can retain from the tenant's \$397.50 security deposit, leaving \$347.50 of the deposit still held in trust.

The monetary portion of the landlord's application is dismissed with leave to reapply.

Conclusion

The landlord is successful in being granted an Order of Possession but the landlord's request for a monetary order for rental arrears was dismissed with leave for service.

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: November 22, 2012.

Residential Tenancy Branch