



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MND, MNR, MNSD, MNDC

Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession for cause and a Monetary Order for unpaid rent for the month of July 2012. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

Initially, the tenant indicated she was not served with the landlord's Application for Dispute Resolution as filed with the Branch. I asked the tenant to read from the Application before her and I determined that, in fact, she had received a copy of the same document that was filed by the landlord.

The tenant submitted that she was not provided a copy of a 1 Month Notice to End Tenancy for Cause in the landlord's evidence package. The landlord submitted that it was included in the evidence package. The tenant stated she received three copies of a 10 Day notice to End Tenancy for Unpaid Rent. The landlord acknowledged that the tenant was also served with copies of a 10 Day Notice.

The tenant claimed she was never served with a 1 Month Notice to End Tenancy for Cause. The landlord testified that his spouse delivered it to the tenant in person. I asked for the landlord's spouse to testify as to service. The landlord's spouse testified that she and another person went to the tenant's site and personally gave the tenant an envelope. The landlord's spouse had not opened the envelope but knew there were rent receipts in the envelope. The tenant stated she did not recall receiving the 1 Month Notice or rent receipts.

Although the landlord had not indicated he was seeking an Order of Possession for unpaid rent on the Application, both parties referred to and were willing to discuss the 10 Day Notice that the tenant did acknowledge receiving and subsequent rent

payments. This decision and the Orders that accompany it reflect what was heard with respect to the 10 Day Notice and subsequent rent payments.

Issue(s) to be Decided

1. Has the landlord established an entitlement to an Order of Possession for cause?
2. Is the landlord entitled to a Monetary Order for unpaid rent for July 2012?
3. Is it necessary and appropriate to issue any other Order(s) to the parties to resolve this dispute?

Background and Evidence

The tenant is required to pay rent of \$260.00 per month. The tenant failed to pay rent for July 2012; August 2012 and September 2012 when due. The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent dated September 10, 2012 (the Notice) indicating the tenant owed \$780.00 in rent as of September 1, 2012. The Notice was personally served upon the tenant September 11, 2012 and has a stated effective date of September 21, 2012. The tenant paid two months of the outstanding rent, or \$520.00, on September 17, 2012. The tenant also gave the landlord post dated rent cheques for the months of October 2012 through January 2013. The landlord deposited the cheques for October, November and December 2012.

Upon receipt of the post-dated cheques the landlord contacted the owner of the property who advised the landlord that he did not wish to continue with the tenancy and wanted the landlord to pursue eviction. The landlord did not communicate this to the tenant and continued depositing the rent cheques for October and November 2012 before filing this Application. The tenant was of the belief the tenancy would continue since the landlord accepted her post-dated rent cheques and that she would pay the remaining arrears when she had the money.

Initially, the tenant indicated she would pay the outstanding arrears "after Christmas". When the tenant stated that she would be receiving income on December 19, 2012 I instructed the tenant to pay the rental arrears on that date. The tenant stated that she may have medical issues that may preclude her from physically delivering the outstanding rent to the landlord on that date. The tenant had a friend present during the hearing. The tenant's friend assured me that she would provide assistance to the tenant to ensure the payment of \$260.00 would be delivered to the landlord's office before the close of business (5:00 p.m.) on October 19, 2012.

The landlord expressed frustration with the tenant's repeated late payments, failure to pay rent, and numerous excuses for not paying rent. The tenant stated that she has not paid the outstanding rent because she does not have the money and is experiencing health problems.

Analysis

The party that serves a document has the burden to prove the document was served. The landlord has requested the tenancy be ended and the landlord be provided an Order of Possession based upon service of a 1 Month Notice. The tenant did not file to dispute a 1 Month Notice but she denied ever receiving one on October 1, 2012 or thereafter. Accordingly, the landlord has the burden to prove the 1 Month Notice was served.

While I accept that the landlord's spouse served the tenant with an envelope on October 1, 2012, the landlord's spouse did not see the contents of the envelope. The landlord submitted that the 1 Month Notice was put in the envelope along with rent receipts; however, I find the tenant's denial of receiving the 1 Month Notice leaves me with disputed verbal testimony as proof of service. I find disputed verbal testimony insufficient to meet the landlord's burden to prove service occurred.

In light of the above, I do not grant an Order of Possession based upon a 1 Month Notice issued October 1, 2012. As I have denied the landlord's request to end the tenancy based upon a 1 Month Notice dated October 1, 2012 the landlord remains at liberty to issue and serve another 1 Month Notice upon the tenant at any time hereafter, as determined necessary by the landlord.

It was undisputed that the tenant did receive a 10 Day Notice in September 2012 and that rent of \$260.00 remains outstanding. The Act requires a tenant to pay rent when due and the Act does not provide any exemption or authorization for a tenant to pay rent based upon the tenant's financial circumstances or health condition. Accordingly, I do find the landlord entitled to \$260.00 and I provide the landlord with a Monetary Order for the unpaid rent in that amount.

While the tenant may have been of the belief the tenancy was reinstated; the landlord stated during the hearing that it had not been reinstated. I accept that there is no evidence of express waiver or withdrawal of the 10 Day Notice. However, the issue of implied waiver is much less clear. On one hand the tenant's cheques were accepted and the tenant views this as an indication the tenancy shall continue. On the other hand the tenant continued to occupy the site and the landlord would otherwise suffer a loss if

the cheques were not deposited. Therefore, in an effort to resolve this dispute and in recognition that the tenant has been in arrears since July 2012 I issue the following ORDERS pursuant to the authority afforded me under section 62 of the Act:

1. No later than 5:00 p.m. on December 19, 2012 the tenant must deliver \$260.00 to the landlord's office.
2. The tenant is responsible for delivery of payment on or before December 19, 2012 and may enlist the assistance of a third party to ensure payment is delivered.
3. The landlord must not refuse to accept payment from the tenant, or a third party delivering the funds on behalf of the tenant, on or before December 19, 2012.

Should the landlord receive payment of \$260.00 from the tenant, or on behalf of the tenant, on or before December 19, 2012 the tenancy shall continue until such time it otherwise ends under the Act. Should the tenant fail to deliver or have delivered \$260.00 to the landlord on or before 5:00 p.m. on December 19, 2012 the landlord is authorized to serve the tenant with the Order of Possession that accompanies this decision. The Order of Possession shall be effective two (2) days after service upon the tenant.

Conclusion

I was not sufficiently satisfied that a 1 Month Notice had been served upon the tenant on October 1, 2012 and I do not grant an Order of Possession based upon that Notice. The landlord remains at liberty to issue and serve another 1 Month Notice upon the tenant as determined necessary by the landlord.

I have issued Orders to the parties in this decision with respect to the outstanding rent pursuant to section 62 of the Act. An Order of Possession accompanies this decision and may be served upon the tenant only in the event the tenant fails to deliver or have delivered payment of \$260.00 to the landlord's office by 5:00 p.m. on December 19, 2012.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: December 06, 2012.

Residential Tenancy Branch