



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and loss of rent; and, authorization to retain the security deposit. The tenants did not appear at the hearing. The landlord testified that he personally served one of the tenants (referred to by initials AF) with the hearing documents on November 22, 2012 at the rental unit.

Section 89 of the Act determines the method of service for documents related to a dispute resolution proceeding. The landlord has applied for a Monetary Order which requires that the landlord serve each respondent as set out under section 89(1). In this case, only one of the two tenants was served with the hearing documents. Therefore, I informed the landlord that any Monetary Order issued to the landlord would name only AF. The landlord indicated that he would be satisfied with authorization to retain the security deposit and withdrew his request for a Monetary Order. As the security deposit belongs to both tenants jointly and severally I find it sufficient to serve one tenant where the landlord seeks to retain the security deposit. Therefore, I have amended the application accordingly.

The landlord has requested an Order of Possession against both tenants. Section 89(2) of the Act determines that the landlord may leave a copy of the Application for Dispute Resolution related to a request for an Order of Possession at the tenant's residence with an adult who apparently resides with the tenant. I find that by serving AF with the hearing documents at the rental unit both tenants have been sufficiently served with the portion of the Application for Dispute Resolution relating to an Order of Possession.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?
Is the landlord authorized to retain the security deposit?

Background and Evidence

The landlord received a security deposit of \$347.50. The tenants are required to pay rent of \$695.00 on the 1st day of every month and are required to pay the landlord for hydro. As of October 4, 2012 the tenants owed the landlord \$523.20 for hydro based upon a written demand issued on October 5, 2012. The landlord received \$347.50 with respect to rent due for November 2012 and did not receive any monies for hydro.

On November 2, 2012 the landlord personally served AF with a 10 Day Notice to End Tenancy for Unpaid Rent, in the presence of the other tenant (referred to by initials DS). The 10 Day Notice has a stated effective date of November 12, 2012 and indicates the tenants failed to pay \$347.50 in rent and \$523.20 in hydro. The tenants did not pay the outstanding rent or utilities and did not file to dispute the 10 Day Notice. The landlord subsequently received a payment of \$347.50 from Income Assistance for one-half of December 2012 rent.

The landlord believes AF has since vacated the property and DS is in the process of moving out. The landlord requested an Order of Possession in order to regain possession of the unit.

The landlord requested authorization to retain the security deposit in satisfaction of the rent and utilities owed by the tenants.

Included in the landlord's evidence were copies of: the 10 Day Notice dated November 2, 2012; the written demand for utilities dated October 5, 2012; and, several utility bills.

Analysis

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent and/or utilities in order to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent and/or utilities, or file to dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

Based upon the landlord's undisputed evidence, I accept that the landlord sufficiently served the tenants with the 10 Day Notice in a manner that complies with the requirements of section 88 of the Act. Since the tenants did not pay the outstanding rent and/or utilities or dispute the Notice within five days of receiving the Notice I find the tenancy has ended and the landlord is entitled to regain possession of the rental unit.

Provided to the landlord with this decision is an Order of Possession effective two (2) days after service upon the tenants.

Based upon the landlord's undisputed evidence, I find the landlord has suffered losses for rent and utilities in excess of the security deposit and I authorize the landlord to retain the security deposit.

Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenants. The landlord has been authorized to retain the security deposit in satisfaction of rent and utilities owed to the landlord.

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: December 27, 2012.

Residential Tenancy Branch