



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent, to keep the security deposit, and to recover the cost of the filing fee from the Tenant for this application.

The Landlord affirmed that on December 10, 2012, she personally served the Tenant's brother with copies of her application for dispute resolution and notice of hearing documents. She confirmed that the Tenant's brother, who is listed as an occupant on the tenancy agreement, is an adult who resides with the Tenant.

Issue(s) to be Decided

1. Should the Landlord be awarded an Order of Possession?
2. Should the Landlord be granted a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: three 10 Day Notices to end tenancy issued between September 2, 2012 to November 2, 2012; the tenancy agreement; and several written notices issued to the tenant.

The parties entered into a fixed term tenancy agreement that began on August 15, 2012 and was set to end on November 30, 2012. The monthly rent is due on the first of each month in the amount of \$720.00 plus \$20.00 for parking for a total amount of rent and fees of \$740.00 per month. On August 11, 2012 the Tenant paid \$360.00 as the security deposit.

The Landlord affirmed that when the Tenant failed to pay the October 1, 2012 rent in full a 10 Day Notice was issued along with subsequent Notices each month following. The most recent Notice was issued and posted to the Tenant's door on November 2, 2012. The Tenant remains in the unit and has accumulated \$2,610.00 in unpaid rent from October 2012 (\$390.00) to January 2013 (3 x \$740.00 Nov, Dec, and Jan). The Landlord seeks an Order of Possession as soon as possible.

Analysis

Section 89 of the *Residential Tenancy Act* and Section 3.1 of the *Residential Tenancy Rules of Procedures* determines the method of service for documents. The Landlord has applied for a monetary order in addition to an Order of Possession which requires that the Landlord serve the named respondent to this dispute, as set out under section 89(1) of the *Residential Tenancy Act*.

In this case an adult who resides with the named respondent was the person who was personally served with the Notice of Dispute Resolution documents. Therefore, I find that service has not been effected, in accordance with Section 89(1) of the Act, for purposes of requesting a Monetary Order. Accordingly, I dismiss the Landlord's request with leave to reapply.

Section 89(2)(c) of the Act stipulates that service of applications for an Order of Possession may be completed by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant. Therefore, I find service has been effected in accordance with the Act and I proceeded with the Landlord's request for an Order of Possession.

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant and her occupant brother have been served several 10 Day Notices by posting them to the Tenant's door in the presence of a witness on November 2, 2012 at 2:30 p.m. The Tenant is deemed to have received the 10 Day Notices on November 5, 2012, three days after they were posted to her door, and the effective date of the Notice is **November 15, 2012**, in accordance with section 90 of the Act.

The Tenant did not pay the rent and did not dispute the Notice, therefore, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit to which the notice relates, pursuant to section 46(5) of the *Act*. Accordingly, I approve the Landlord's request for an Order of Possession.

The Landlord has been partially successful with their application; therefore, I award partial recovery of their filing fee in the amount of **\$25.00**.

Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **Two (2) Days upon service**. This Order is legally binding and must be served upon the Tenant.

I HEREBY DISMISS the Landlord's request for a Monetary Order, with leave to reapply.

The Landlord may retain \$25.00 from the Tenant's security deposit, as full satisfaction of the onetime award for their filing fee.

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: January 15, 2013

Residential Tenancy Branch

