



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR 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, and to recover the cost of the filing fee from the Tenant for this application.

The Landlord affirmed that on December 9, 2012, she attempted to serve the Tenant with the Notice of Dispute Resolution hearing documents by registered mail however, the documents were returned to her unclaimed. The Landlord confirmed that she attempted to serve the hearing documents to the Tenant in person on January 7, 2013, and when the Tenant failed to answer the door the Landlord taped the documents to the Tenant's door.

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: a 10 Day Notice to end tenancy dated November 26, 2012, and a tenancy agreement.

The Landlord confirmed that she entered into a written month to month tenancy agreement with her friend of over twenty years that began on October 1, 2012. Her friend had promised to pay her the October rent in two payments during the course of October however the Tenant has failed to pay any rent at all.

The Landlord stated that on November 26, 2012 she attended the rental unit and spent approximately thirty minutes with the Tenant's teenage son awaiting the arrival of the Tenant. The son informed the Landlord that he was not able to locate his mother so the Landlord left the 10 Day Notice on their coffee table. I questioned the Landlord why her

written submission indicates she had posted the Notice to the Tenant's door. She advised that she was worried that leaving it in the presence of a teenager was not adequate service. I confirmed that the Notice was left inside the unit in a conspicuous place therefore it would be adequate service.

The Landlord submitted that the Tenant has taken full advantage of her by continuing to occupy the rental unit since October 2012 without paying anything towards rent.

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 the Landlord served the Tenant with the hearing documents by posting them on the Tenant's door. 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 monetary request with leave to reapply.

Section 89(2)(d) of the Act stipulates that service of applications for an Order of Possession may be completed by attaching a copy to a door or other conspicuous place at the address at which the tenant resides. 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 I find the Tenant was deemed served the 10 Day Notice November 29, 2012, three days after it was left on the Tenant's coffee table, and the effective date of the Notice is **December 9, 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 her 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.

The Landlord has been issued a Monetary Order for recovery of the filing fee in the amount of **\$25.00**. This Order is legally binding and must be served upon the Tenant.

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

