



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 dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") for an order of possession for the rental unit due to unpaid rent, a monetary order for unpaid rent and money owed or compensation for damage or loss, for authority to retain the tenant's security deposit and to recover the filing fee.

The landlord appeared; the tenant did not appear.

The landlord provided oral and documentary evidence that they served the tenant with the Application for Dispute Resolution and Notice of Hearing by registered mail on November 22, 2012. The landlord supplied the receipt for the registered mail.

I will address my findings on the service of the Notice of Hearing later in this Decision.

The landlord was provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary Issue-The landlord stated that they were not certain when the tenant vacated the rental unit; however, the landlord became aware of the tenant having vacated the rental unit on November 30, 2012, after having posted a notice of inspection set for that date. The landlord testified that the locks to the rental unit were then changed.

I therefore amended their application to exclude a request for an order of possession due to unpaid rent and the hearing proceeded on the landlords' monetary claim.

Issue(s) to be Decided

Is the landlord entitled to a monetary order and to recover the filing fee?

Background and Evidence

I was not provided a tenancy agreement; however the landlord said that this tenancy began on May 16, 2012, monthly rent is \$750.00, and a security deposit of \$375.00 was paid by the tenant at the beginning of the tenancy.

The landlord gave evidence that on October 17, 2012, the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by posting it on the tenant's door, listing unpaid rent of \$2386.00 as of October 1, 2012. The effective vacancy date listed on the Notice was October 29, 2012. Section 90 of the Act states that documents served in this manner are deemed delivered three days later. Thus the tenant was deemed to have received the Notice on October 20, 2012, and the effective move out date is automatically changed to October 30, 2012.

The landlord confirmed that NSF charges were included in the unpaid rent amount listed.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained the tenant had five days to dispute the Notice.

I have no evidence before me that the tenant applied to dispute the Notice.

The landlord stated that the tenant made no further payment of rent and as of the date of the hearing, the tenant owed \$3136.00 in unpaid rent through Notice 2012, and loss of revenue for December 2012 in the amount of \$750.00, the amount of the landlord's monetary claim.

Analysis

Based on the oral and written evidence and on a balance of probabilities, I find as follows:

Section 89 of the Residential Tenancy Act requires that an application for dispute resolution be served upon the respondent (the tenant in this case) by leaving it with the person, by sending a copy by registered mail to the address at which the person resides

or if a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant.

In the case before me, as the tenant failed to pay rent or dispute the Notice, the tenancy was conclusively ended by operation of the landlord's Notice on the effective date of the Notice, October 30, 2012.

The landlord served the Hearing Package to the tenant via registered mail on November 22, 2012, and the tenant would have been deemed to have received it on November 27, 2012 if the tenant was still in possession of the rental unit.

As the landlord provided no evidence of the date the tenant vacated the rental unit, I therefore, on a balance of probabilities and insufficient evidence by the landlord, cannot find that the tenant was served with the Notice of Hearing and Application for Dispute Resolution as required by Section 89 of the Act.

I therefore dismiss the landlord's application, with leave to reapply.

Leave to reapply does not extend any applicable time limitation deadlines.

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 02, 2013.

Residential Tenancy Branch

