



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, CNR, ERP, RP, O

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an Order of Possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67.

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order to the landlord to make repairs and emergency repairs to the rental unit pursuant to section 33; and
- other unspecified remedies.

The tenant did not attend this hearing, although I waited until 11:18 a.m. in order to enable him to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The landlord testified that she handed the 10 Day Notice to an adult woman (AW) who apparently resides at the rental unit at 3:43 p.m. on December 4, 2012. The landlord entered into written evidence a Proof of Service document regarding her hand delivery of the 10 Day Notice to this woman. This document was signed by both the landlord and the woman who accepted it, who confirmed receiving the 10 Day Notice on December 4, 2012. As this method of service delivery is allowed under section 88(e) of the *Act*, I find that the tenant was duly served with the landlord's 10 Day Notice.

The landlord testified that she sent the tenant a copy of the landlord's dispute resolution hearing package by registered mail on December 11, 2012. She entered into written evidence a copy of the Canada Post Tracking Number. I am satisfied that the landlord served these documents to the tenant in accordance with the *Act*.

Although the landlord testified that she had not been served with a copy of the tenant's dispute resolution hearing package, the tenant submitted a copy of a Canada Post Tracking Number to demonstrate that the tenant's hearing package was sent by

registered mail on December 15, 2012. Canada Post records reveal that the tenant's hearing package was successfully delivered to the landlord on December 18, 2012. Based on this written evidence and in accordance with section 90 of the *Act*, I find that the landlord was deemed to have been served with the tenant's dispute resolution hearing package by December 20, 2012, the fifth day after its registered mailing.

Issues(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Is the landlord entitled to a monetary award for unpaid rent? Should orders be issued to the landlord to undertake repairs or emergency repairs?

Background and Evidence

This tenancy commenced initially as a six-month fixed term tenancy on May 15, 2011. The tenancy converted to a periodic tenancy after the expiration of the initial term. Monthly rent is currently set at \$950.00, payable in advance on the first of each month. The landlord currently holds the tenant's \$475.00 security deposit paid on May 6, 2011.

The landlord issued the 10 Day Notice for \$950.00 in rent owing for December 2012. The landlord testified that the tenant has made no further payments to the landlord.

Analysis – Tenant's Application

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the dispute resolution proceeding The dispute resolution proceeding must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of the applicant's participation in this hearing, I order the application dismissed without liberty to reapply.

Analysis – Landlord's Application

Section 52(c) of the *Act* establishes that in order to be effective a notice to end tenancy must state the effective date of the notice. The landlord's 10 Day Notice did not identify any effective date. Although section 53 of the *Act* allows me to revise incorrect effective dates, it does not provide me with the authority to insert an effective date when a landlord fails to identify any effective date to end the tenancy. As I find that this error constitutes a fatal flaw in the 10 Day Notice, I find that the 10 Day Notice issued by the landlord on December 4, 2012 is of no legal effect. I dismiss the landlord's application for an Order of Possession on the basis of that 10 Day Notice.

Based on the undisputed evidence provided by the landlord, I am satisfied that the landlord is entitled to the monetary award of \$950.00 requested in the landlord's application for dispute resolution for unpaid rent owing in December 2012. Although the landlord's application does not seek to retain the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

Conclusion

I dismiss the tenant's application without leave to reapply. I dismiss the landlord's application to end this tenancy on the basis of the 10 Day Notice issued on December 4, 2012, without leave to reapply. This tenancy continues.

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent for December 2012 and to retain the tenant's security deposit:

Item	Amount
Unpaid December 2012 Rent	\$950.00
Less Security Deposit	-475.00
Total Monetary Order	\$475.00

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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 17, 2013

Residential Tenancy Branch

