



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 was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Tenant did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began mid October 2012. Rent in the amount of \$1,250.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$600.00. The Tenant failed to pay rent for November and December 2012 and on December 12, 2012 the Tenant paid \$584.00 towards the rental arrears. On December 27, 2012 the Landlord

served the Tenant with a 10 day notice to end tenancy for unpaid rent (the "Notice") by leaving the Notice with the Tenant's 14 year old son. The Tenant failed to pay the rent for January 2013, has not disputed the Notice and has not moved out of the unit. The quantum of the Landlord's claims is \$2,566.00.

Analysis

Section 88 of the Act requires that a document such as the Notice be served as follows:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service prescribed in the regulations.

Given that the Landlord served the Notice on a minor, it cannot be found that the Landlord served the Notice as required under the Act. Accordingly, I find that the Notice

is not valid and that the Landlord is not entitled to an Order of Possession. I dismiss this claim from the application.

Section 26 of the Act requires that a tenant must pay rent when it is due. Based on the Landlord's undisputed evidence that the Tenant failed to pay rent rental arrears and considering that the Tenant was duly served with the application making a claim for this unpaid rent, I find that the Landlord has substantiated a monetary entitlement to **\$3,166.00**. The Landlord is also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$3,216.00**. Setting the security deposit of **\$600.00** plus zero interest off this entitlement leaves **\$2,616.00** owing by the Tenant to the Landlord.

Conclusion

I order that the Landlord retain the **deposit** and interest of \$600.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$2,616.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order 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 30, 2013

Residential Tenancy Branch

