



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 scheduled to deal with a landlord's application for an Order of Possession and Monetary Order for unpaid rent. The tenant did not appear at the hearing. The landlord testified that the hearing documents were taped to the door of the rental unit on April 10, 2013 in the presence of a police officer. I was satisfied the tenant was served with the hearing documents in a manner that complies with the Act for purposes of requesting an Order of Possession; however, I find the landlord did not serve the tenant sufficiently for purposes of obtaining a Monetary Order, for the reasons provided below.

Section 89 of the Act provides requirements for serving an Application for Dispute Resolution to the other party. Section 89(1) applies to monetary claims and provides that acceptable methods of serving the other party are by way of personal service or registered mail. Since the landlord did not use one of the acceptable methods of service for a monetary claim I have not considered that portion of the landlord's Application for Dispute Resolution further. The landlord remains at liberty to file another Application for Dispute Resolution seeking monetary compensation from the tenant.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

The tenancy commenced February 1, 2013 and the tenant paid a security deposit of \$750.00. The tenant is required to pay rent of \$1,500.00 on the 1st day of every month for a fixed term of 12 months. The tenant paid only \$750.00 in rent for the month of March 2013 and on March 16, 2013 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice). The Notice indicates that rent of \$750.00 was outstanding as of March 1, 2013 and had an unspecified effective vacancy date.

The landlord testified that on March 16, 2013 the landlord personally gave the Notice to the adult male occupant that resides with the tenant. Since serving the Notice the tenant has not paid the outstanding rent. Nor has the tenant paid any rent for the month of April 2013.

The landlord submitted that it appears the tenant is in the process of moving as a moving truck is at the property but requested an Order of Possession be provided as soon as possible to serve and enforce in the event the tenant and/or occupants do not vacate.

Analysis

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. Where a tenant does not pay rent the landlord is at liberty to issue a 10 Day Notice to End Tenancy.

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

I accept the evidence before me that the landlord served the 10 Day Notice to the tenant by giving it to an adult person that resides with the tenant on March 16, 2013, which is an acceptable method of service of a Notice to End Tenancy under section 88 of the Act. Although the stated effective date was left blank, pursuant to sections 46 and 53 of the Act I find the effective date automatically changes to comply with the Act and reads March 26, 2013.

Since the tenant did not pay the outstanding rent or dispute the Notice within five days of receiving the Notice I find the tenancy ended on March 26, 2013 and the landlord is entitled to regain possession of the rental unit. Provided with this decision is an Order of Possession effective two (2) days after service upon the tenant.

I award the filing fee to the landlord and authorize the landlord to deduct \$50.00 from the tenant's security deposit in satisfaction of this award.

Conclusion

The landlord is provided an order of Possession effective two (2) days after service upon the tenant. The landlord is authorized to deduct \$50.00 from the tenant's security deposit in order to recover the filing fee paid for this application.

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: April 25, 2013

Residential Tenancy Branch

