



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent; and, authority to retain the security deposit. The tenant did not appear at the hearing. The landlord testified that the hearing documents were posted on the door of the rental unit on July 26, 2013. The landlord confirmed that the tenant has not yet returned possession of the rental unit to him.

Section 89(1) and (2) of the Act provide for the ways an Application for Dispute Resolution must be served upon the other party. Where a landlord applies for an Order of Possession the hearing documents may be posted on the door of the rental unit. Where a landlord applies for a Monetary Order the hearing package must be personally served upon the tenant or sent to the tenant via registered mail. As the hearing documents were posted to the door of the rental unit, I proceed to consider the landlord's entitlement to an Order of Possession; however, the landlord's monetary claims are dismissed with leave to reapply.

Issue(s) to be Decided

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

Background and Evidence

Under a verbal tenancy agreement, the tenant is required to pay the landlord rent of \$650.00 on the 1st day of every month and the tenant paid a security deposit of \$325.00. The tenant has not paid rent since March 2013. On July 8, 2013 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the door of the rental unit. The Notice indicates rent of \$2,600.00 was outstanding as of July 1, 2013 and has a stated effective date of July 18, 2013. The tenant has not paid the outstanding rent and did not file to dispute the Notice.

As documentary evidence the landlord provided a copy of the 10 Day Notice and a ledger showing the last payment was received for March 2013.

Analysis

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. By definition under the Act, a tenancy agreement includes verbal agreements respecting use and occupation of a rental unit. Based upon the evidence presented to me, I am satisfied the parties entered into a tenancy agreement requiring the tenant to pay rent of \$900.00 per month.

Where a tenant does not pay the rent due 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 posted a 10 Day Notice to End Tenancy on the door of the rental unit on July 8, 2013. Since the 10 Day Notice was posted it is deemed to be received three days later under section 90 of the Act. Accordingly, the effective date of the Notice automatically changes to comply with the Act and reads July 21, 2013 pursuant to sections 46 and 53 of the Act

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 July 21, 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 has been provided an Order of Possession effective two (2) days after service upon the tenant. The landlord has been authorized to deduct \$50.00 from the tenant's security deposit to recover the filing fee paid for this application. The landlord's monetary claims have been dismissed with leave to reapply.

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: August 29, 2013

Residential Tenancy Branch

