



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession and a monetary order. Both parties appeared and had an opportunity to be heard.

Issue(s) to be Decided

- Is the landlord entitled to an order of possession and, if so, upon what terms?
- Is the landlord entitled to a monetary order and, if so, in what amount?

Background and Evidence

This month-to-month tenancy commenced May 24, 2012. The monthly rent of \$950.00 is due on the first day of the month. The landlord collected a security deposit of \$475.00.

On July 7, 2013 the landlord issued a 10 Day Notice to End Tenancy for Non-Payment of Rent. He testified that he served it personally on the tenant. At first the tenant testified that she received it; later in the hearing she said she had not.

The notice includes information advising a tenant, among other things, that:

- The notice is cancelled if the tenant pays the arrears within five days.
- The tenant has five days to dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.
- The tenant may dispute the notice if they have proof that the rent was paid.
- The tenant is not entitled to withhold rent unless ordered by a dispute resolution officer.
- The tenant may be evicted if they do not respond to the notice.

The landlord testified that the tenant paid \$500.00 toward rent in July, he was not sure of the date. The tenant said the payment was made at the end of July.

The tenant testified that she only made a partial payment for July and no payment for August because the landlord has not fixed the roof or made other repairs.

Both parties testified that the tenant has not filed an application for dispute resolution asking for a repair order or disputing this notice to end tenancy.

On July 24 the landlord issued this application for dispute resolution. He served it on July 25 by giving it to the tenant's boyfriend, who resides with her. The tenant acknowledged that this document had been given to her boyfriend.

The landlord testified that the arrears of rent as of July 1, 2013 were \$4,357.85. This was a lesser amount than the arrears stated on the notice to end tenancy. The landlord said that after he issued the notice he re-checked his records and found that he had overlooked a \$600.00 payment made on August 7, 2012.

The tenant said she had proof that all of the rent has been paid. She says she can get records from the Ministry detailing the payments that were made on her behalf and that although the landlord did not give her receipts for every payment made, she could file copies of the receipts she had received.

The tenant stated she had not filed any evidence in advance of the hearing because there was nothing in the material she had received that stated she could or had to. When directed to paragraph 1 of the Notice of Hearing which states: "Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing. Instructions for evidence processing are included in this package. Deadlines are critical."; the tenant responded by saying she works full time and does not have time to do this.

When asked for verbal testimony about payments made the tenant said she had no idea what the Ministry paid on her behalf and after she started working and paying the rent on her own, she did not keep track of the payments she had made.

Analysis

Section 89 of the *Residential Tenancy Act* sets out the rules for serving an application for dispute resolution on a tenant. It may be served by:

- leaving a copy with the tenant;
- sending a copy by registered mail to the address at which the tenant resides or to a forwarding address provided by the tenant.

If the application is for an order of possession, two additional means of service are allowed:

- leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- attaching a copy to a door or other conspicuous place at the address at which the tenant resides.

In other words, leaving a copy with an adult who apparently resides with the tenant is valid service of an application for dispute resolution asking for an order of possession but not of an application asking for monetary order. Accordingly, the landlord's claim for a monetary order is dismissed with leave to re-apply. This decision will deal with the landlord's application for an order of possession only.

The 10 Day Notice to End Tenancy for Non-Payment of Rent was in the prescribed form. I accept the landlord's evidence that he serve the notice by giving it personally to the tenant.

I am satisfied on the evidence that there were arrears of rent owed at the time the notice was issued and served, as the tenant's own evidence is that she did not make any payment towards the July rent until the end of that month. It is not necessary for me to determine the total amount of the arrears owed when deciding whether a landlord is entitled to an order of possession. The fact that the amount claimed on the application for dispute resolution is different than the amount claimed on the notice to end tenancy is not significant on this application for two reasons:

- The *Act* gives a tenant a mechanism to dispute amount claimed as arrears.
- The amount claimed had been adjusted in the tenant's favour.

Section 46(5) of the *Act* states that a tenant who received a 10 Day Notice to End Tenancy and does not pay the arrears of rent or file an application to dispute the notice within five days of receiving it:

- is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice; and,
- must vacate the rental unit by the effective date of the notice.

Based on the above I find that the landlord is entitled to an order of possession effective two days after service on the tenant.

I also find that the landlord is entitled to reimbursement from the tenant of the \$50.00 he paid to file this application. Pursuant to section 72 that amount may be deducted from the security deposit.

Conclusion

An order of possession effective two days after service on the Tenant has been granted to the landlord. If necessary, this order may be filed in the Supreme 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: August 30, 2013

Residential Tenancy Branch

