



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR MNSD FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act for orders as follows:

- a) A monetary order pursuant to Section 67;
- b) An Order of Possession pursuant to Sections 46, and 55;
- c) An Order to retain the security deposit pursuant to Section 38; and
- d) An order to recover the filing fee pursuant to Section 72.

SERVICE:

The tenant did not attend. The landlord provided evidence that she had served both the Notice to end Tenancy dated July 3, 2013 and the Application for Dispute Resolution by posting them on the door. I find that the tenant was properly served with the Notice to End Tenancy according to sections 88 and 89 of the Act but was not sufficiently served with the Application for the purpose of obtaining a monetary order according to section 89 but only for obtaining an Order of Possession.

Issue(s) to be Decided:

The tenant was issued a Notice to End Tenancy dated July 3, 2013 for unpaid rent. Is the landlord now entitled to an Order of Possession and to a Monetary Order for rental arrears and filing fee?

Background and Evidence:

The tenant did not attend and was only served with the Application for purposes of obtaining an Order of Possession. The landlord attended and was given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the rent is \$510 a month and a security deposit of \$255 was paid. The landlord said that after a police incident in July, the tenant appeared to vacate on July 31, 2013 but had left some items behind. She claims rent for July 2013 of \$510 but had served the Application/Notice of Hearing by posting it on the tenant's door.

The landlord is storing the tenant's goods. I advised her to follow the Residential Tenancy Regulations regarding storage of tenant's goods. She requested an Order of

Possession; after being advised of the problem with service of the Application, she was concerned about the security deposit. On the basis of the solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

I find that the landlord is entitled to an Order of Possession. There is outstanding rent. The Tenant has not made application pursuant to Section 46 to set aside the Notice to End a Residential Tenancy and the time to do so has expired. In these situations, the Residential Tenancy Act provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. An Order of Possession is issued effective one day from service. I find the Application/Notice of Hearing was sufficiently served to obtain an Order of Possession.

I decline to make a finding on rental arrears or to provide a monetary order to the landlord as she did not serve the Application/Notice of Hearing in compliance with section 89(1) of the Act which provides for personal or registered mail service if a monetary order is required. To answer the landlord's concern, I advised her that in accordance with section 38 of the Act, she would have 15 days after notification of the tenant's new address to file an Application to claim against the \$255 security deposit (now \$250 after deduction of the filing fee) which she holds in trust for the tenant.

Conclusion:

I find the landlord is entitled to an Order of Possession effective one day from service but not to a monetary order as the Application was not served in accordance with section 89(1) of the Act. I give the landlord leave to reapply for a monetary order when she can serve the tenant. I find the landlord entitled to recover filing fees for this application. **I HEREBY ORDER THAT the landlord may deduct \$50 from the security deposit to recover her filing fee; this leaves a balance of \$205 in trust.**

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 28, 2013

Residential Tenancy Branch