



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYALMANSIONS INVESTMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with a landlord's application for an Order of Possession and Monetary Order for unpaid rent; and, authorization to retain the security deposit. The landlord named two tenants in filing this Application for Dispute Resolution and neither respondent appeared at the hearing. The landlord testified that he put the hearing documents in the mail slot on the rental unit door within three days of filing this Application for Dispute Resolution.

Section 89 of the Act determines the method of service for an Application for Dispute Resolution. The landlord has applied for a Monetary Order which requires that the landlord serve the respondent as set out under section 89(1). Section 89(1) provides that an Application for Dispute Resolution for a Monetary Order must be served upon the respondent in person or by registered mail. Since the landlord did not serve the respondents in accordance with section 89(1) I did not consider the landlord's request for a Monetary Order further. This portion of the landlord's application is dismissed with leave to reapply.

Where a landlord seeks an Order of Possession the landlord is required to serve the Application for Dispute Resolution in a manner that complies with section 89(2) of the Act. Section 89(2) permits a landlord to serve the Application for Dispute Resolution by attaching a copy to a door or other conspicuous place at the address at which the tenant resides. As permitted under section 71 of the Act I find and order that putting the hearing documents through the mail slot in the door of the rental unit sufficient for purposes of serving an Application for Dispute Resolution with respect to an Order of Possession. Accordingly, I continued to hear from the landlord with respect to its entitlement to an Order of Possession.

I noted that the landlord named two tenants in this Application for Dispute Resolution; however, one of the respondents (referred to by initials AHJ in this decision) is not named on the written tenancy agreement submitted as evidence. The landlord

explained that one of the co-tenants named in the tenancy agreement had moved out a couple of months ago and AHJ moved into the rental unit with the remaining co-tenant. The landlord had not been successful in getting AHJ to sign a tenancy agreement.

I excluded AHJ as a named party to this dispute because I found I was not provided sufficient evidence to conclude she was privy to and executed a tenancy agreement. Therefore, this decision names the tenant who signed the tenancy agreement and continues to reside in the rental unit (referred to by initials RS).

Issue(s) to be Decided

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

Background and Evidence

The tenant is required to pay rent of \$1,600.00 on the 1st day of every month. For the month of August 2013 the landlord received only \$800.00. On August 9, 2013 the deposited a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) in the mail slot of the rental unit door. The Notice indicates \$800.00 was outstanding as of August 1, 2013 and has a stated effective date of August 19, 2013. The landlord testified that the \$800.00 remains outstanding although rent was paid for September 2013.

The landlord stated that he would like to regain possession of the rental unit if the outstanding rent is not paid. The landlord stated that the tenant filed an Application for Dispute Resolution which is set for hearing in November 2013; however, the tenant's Application for Dispute Resolution did not indicate the tenant was disputing the 10 Day Notice. I confirmed with the Branch records that the tenant did not indicate the 10 Day Notice was under dispute on his Application for Dispute Resolution.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord violates the Act, regulations or tenancy agreement unless the tenant has a legal right to make a deduction from rent.

Where a tenant does not pay rent the landlord is at liberty to issue a 10 Day Notice to End Tenancy. Upon receiving 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 placing it in the mail slot of the rental unit on August 9, 2013 and pursuant to section 90 of the Act it is deemed to be received three days later on August 12, 2013. Accordingly, the effective date of the 10 Day Notice automatically changes to read August 22, 2013 under section 53 of the Act.

Since the tenant did not pay the outstanding rent or file an Application for Dispute Resolution to dispute the 10 Day Notice within five days of receiving the 10 Day Notice I find the tenancy ended on August 22, 2013.

Although I heard the landlord accepted rent from the tenant for the month of September 2013, in serving the tenant with the landlord's Application for Dispute Resolution I find the landlord has clearly communicated to the tenant that the landlord seeks to end the tenancy and obtain an Order of Possession due to the unpaid rent for August 2013 and since the tenant has not come forward with the balance of rent for August 2013 I find the tenancy has not been reinstated.

In light of the above, I find the landlord is entitled to regain possession of the rental unit and I provide the landlord with an Order of Possession effective two (2) after service upon the tenant.

I award the landlord recovery of the \$50.00 filing fee. The landlord is provided a Monetary Order in the amount of \$50.00 to serve upon the tenant. Alternatively, I authorize the landlord to deduct \$50.00 from the tenant's security deposit in satisfaction of this award.

Conclusion

The tenancy has ended for unpaid rent and the landlord is provided an Order of Possession effective two (2) days after service. The landlord has been awarded recovery of the filing fee by way of a Monetary Order and authorization to deduct \$50.00 from the tenant's security deposit if the Monetary Order is not satisfied. The landlord's monetary claim for unpaid rent has 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: October 01, 2013

Residential Tenancy Branch

