



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding JOT HOLDINGS INC and REALTY EXECUTIVES VANTAGE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This matter was convened by way of conference call in response to an application made by the landlords for an Order of Possession and a Monetary Order for unpaid rent or utilities, to keep all or part of the pet damage or security deposit and to recover the filing fee from the tenants.

The landlords made the application and served each of the tenants with a copy of the application and Notice of Hearing documents by posting them to the tenants' door. Section 90 of the *Act* provides that a document served in this manner is deemed to have been received three days later. In the absence of any evidence from the tenant to refute this, I find that the tenants were served the hearing documents as per the requirements of the *Residential Tenancy Act* (referred to as the '*Act*').

However, with regard to the landlords' application for a Monetary Order for unpaid rent and to keep all of the pet damage and security deposits, Sections 88 and 89 of the *Act* determine the method of service for documents. The landlords have applied for a Monetary Order which requires a copy of the application be served to the tenants as set out under Section 89(1) of the *Act*. As the landlords posted the documents to the tenants' door, this method of service is not acceptable under Section 89(1) of the *Act*. Consequently, I dismiss the monetary portion of the landlords' application with leave to reapply.

An agent for the landlords appeared for the hearing to give affirmed testimony and also provided documentary evidence in advance of the hearing. There was no appearance for the tenants, despite being served notice of the hearing in accordance with the *Act*. All of the testimony and documentary evidence was considered in this Decision.

Issue(s) to be Decided

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

Background and Evidence

The landlords' agent testified that the tenancy started in March 1, 2013 for a fixed term of one year. Rent in the amount of \$1000.00 is payable by the tenants on the first day of each month. The landlords took from the tenants a security deposit in the amount of \$500.00 on February 16, 2013 and a pet damage deposit in the amount of \$500.00 sometime in April, 2013.

The landlords' agent testified that the tenants failed to pay rent twice since the start of the tenancy and as result, on each occasion, were issued with a notice to end tenancy. In July, 2013, the landlords' agent testified that the tenants only paid \$730.00. The tenants were issued with a receipt, provided as evidence, which detailed the partial payment and documented the fact that there was \$270.00 still owed by the tenants.

On August 1, 2013 the tenants failed to pay rent for August, 2013 and as a result, the landlords served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent on August 3, 2013 by positing it to the tenants' door. The landlords' agent provided a copy of the notice which shows an expected date of vacancy of August 13, 2013 with an amount of \$1,270.00 outstanding for unpaid rent due on July 1, 2013. The landlords' agent testified that the date the unpaid rent was due on the notice was incorrect and that this should have read as August 1, 2013 for the date the amount outstanding was due on. As a result of the tenants failing to pay rent, the landlords now seeks an Order of Possession as the tenants still reside in the rental unit.

Analysis

The tenants failed to attend the hearing or provide any written submissions prior to this hearing taking place. In the absence of the undisputed testimony and evidence provided by the landlords, I make the following determination.

Having examined the notice to end tenancy, I find that the contents complied with the requirements of the *Act*. Policy Guideline 11 on 'Amendments and Withdrawal of Notices' allows an Arbitrator to amend the notice if the person receiving the notice should have known the information to be amended. The tenant only paid a partial amount of rent on July 1, 2013 for which they were issued a receipt stating that an amount of \$270.00 was still outstanding. I accept the landlord's evidence that the tenant did not pay rent for August, 2013, either. As a result this left an outstanding balance of \$1,270.00 which the tenants should have known was payable to the landlords. As a

result, I accept the amendment to the notice to end tenancy and find that it is still valid and enforceable.

Section 46(4) and (5) of the *Residential Tenancy Act* states that within five days of a tenant receiving a Notice to End Tenancy for Unpaid Rent or Utilities, a tenant must pay the overdue rent or apply for dispute resolution; if the tenant fails to do either, then they are conclusively presumed to have accepted the notice to end tenancy and they must vacate the rental unit on the date to which the notice relates.

As a result, I accept that the tenants were served by the landlords with the notice to end tenancy on August 3, 2013 by posting it to the tenants' door. Section 90 of the *Act* provides that a document is deemed to have been served three days after such mailing. Therefore, the tenants had until August 11, 2013 to pay the overdue rent or apply to dispute the notice as required by the *Act*, neither of which the tenants did. As a result, I find that the tenants are conclusively presumed to have accepted that the tenancy ended as per the notice, and therefore the landlords are entitled to an Order of Possession. As the landlords have been successful in this matter, the landlords are also entitled to recover from the tenants the \$50.00 filing fee for the cost of this application.

Conclusion

For the reasons set out above, I grant the landlords an Order of Possession effective **2 days after service on the tenants**. This order may then be filed and enforced in the Supreme Court as an order of that court.

Pursuant to Section 72(2) (b) the landlord is able to recover the filing fee from the tenants by deducting this amount from the tenants' security deposit.

The landlords' application for a monetary order for unpaid rent and to keep all or part of the security and pet damage deposit is dismissed with leave to re-apply.

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 03, 2013

Residential Tenancy Branch

