



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MIDDLEGATE DEVELOPMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MNR, MNSD, MNSC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, for a monetary order for money owed for unpaid rent, to keep all or part of the security deposit and an order to recover the cost of filing the application from the tenant.

The landlord's agent attended the hearing. The tenant (MM) attended the hearing. As the tenant (CT) did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord's agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on August 28, 2013, a Canada post tracking number was provided as evidence of service, the tenant (CT) did not appear.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant (CT) has been duly served in accordance with the Act.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Preliminary Issue

At the outset of the hearing, the landlord's agent stated that the monetary portion of their application is not required to be heard as the tenant did not default in rent payments as anticipated.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for cause?

Is the landlord entitled to recover the cost of the filing fee?

Background and Evidence

The landlord's agent testified that the tenants were served with a one month notice to end tenancy for cause issued on July 2013. The landlord stated it was served by two methods, the first was by register mailed, which was sent on July 11, 2013, a Canada post tracking number was submitted as evidence.

The landlord's agent stated the second method was by posting to the door of the rental unit on July 11, 2013. The landlord's agent stated that they went back to the rental unit the notice had been removed.

The tenant (MM) testified that she was away until the later part of July 2013, and the registered mail pack was returned unclaimed. The tenant stated she does not believe her daughter the co-tenant received the notice to end tenancy while she was away, however, she has vacated the rental property.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Based on the testimony of the landlord's agent, I find that the tenants were served with a one month notice to end tenancy for cause on registered mail, which was sent on July 11, 2013. Under section 89 of the Act, a document served in this matter is deemed served five days later.

Further, the testimony of the landlord's agent was that they posted a copy of the notice on the door of the rental unit and that document was removed. Under section 89 of the Act, a document served in this matter is deemed served three days later.

While the evidence of the tenant (MM) was that she was away until the end of July 2013, the co-tenant (CT) was still occupying the rental unit, when the notice was removed off the door. The tenant (CT) did not attend to provided evidence to the contrary.

As a result, I find the tenants were served with the one month notice to end the tenancy issued on July 11, 2013.

The tenants did not apply to dispute the Notice and is therefore conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the landlord is entitled to an order of possession. While that order would be effective upon 2 days service on the tenants, the landlord's agent has agreed to extend the effective date to November 30, 2013.

I find that the landlord is entitled to an order of possession effective November 30, 2013 **at 1:00 pm**. A copy of this order must be served on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord has established a total monetary claim of \$50.00 for the fee paid by the landlord for this application. I order that the landlord retain the \$50.00 from the security deposit in full satisfaction of the claim.

Conclusion

The tenants failed to dispute the notice to end tenancy. The tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy.

The landlord is granted an order of possession, and may keep a portion of the security deposit in full satisfaction of the claim.

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 07, 2013

Residential Tenancy Branch

