



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession and a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenant did not appear at the hearing.

The Application for Dispute Resolution and Notice of Hearing were given by the landlord to the tenant's girlfriend who lives in the rental unit with the tenant. In a subsequent conversation the landlord advised the tenant of the date and time of the hearing.

Sections 88 and 89 of the *Residential Tenancy Act* prescribe the means by which documents may be served on a tenant by a landlord. An application for a monetary order may be served by:

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

An application for an order of possession may be served in the same manner. In addition, the Act allows such an application to be served on a tenant by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant.

Based on the landlord's evidence of his conversation with the tenant about the hearing and the tenant's apparent acknowledgement of the application for dispute resolution I find, pursuant to sections 71(c) and 88 that the application for dispute resolution was sufficiently given or served for purposes of the *Act* when it was given to the tenant's co-habitant.

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?
- Is the landlord entitled to retain the security deposit?

Background and Evidence

This tenancy commenced March 14, 2011 as a one year fixed term tenancy and has continued thereafter as a month-to-month tenancy. The monthly rent of \$750.00 is due on the first day of the month. The tenant paid a security deposit of \$375.00.

The landlord testified that the tenant was served with a 10 Day Notice to End Tenancy for Non-Payment of Rent on November 18, 2013, by personal service on the tenant. That document includes information advising the tenant that the notice is cancelled if the tenant paid the arrears of rent within five days. It also advises that the tenant has five days to dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. The landlord testified that the tenant did neither.

The landlord testified that the tenant did not pay the rent for the period of January to June, 2013, inclusive; a total of \$4500.00. The tenant paid the rent for July, August and September, but has not paid any rent since.

Analysis

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

The Tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the *Residential Tenancy Act* to have accepted that the tenancy ended on the effective date of the Notice. Based on the above facts I find that the landlord is entitled to an order of possession effective two days after service on the Tenant.

I find that the landlord has established that the arrears of rent are greater than \$4500.00 that was the amount claimed on the application for dispute resolution. I find that the landlord has established a total monetary claim of \$4550.00 comprised of arrears of rent in the amount of \$4500.00 and the \$50.00 fee paid by the landlord for this application. I order that the Landlord retain the deposit of \$375.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of \$4125.00..

Conclusion

- a. An order of possession effective two days after service on the Tenant has been granted. If necessary, this order may be filed in the Supreme Court and enforced as an order of that Court.
- b. A monetary order in favour of the landlord in the amount of \$4125.00 has been granted. If necessary, it may be filed in the Provincial Court (Small Claims) 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: January 31, 2014

Residential Tenancy Branch

