



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This matter was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlords for an Order of Possession and a Monetary Order for unpaid rent or utilities. The Landlords also applied to keep Tenant’s security deposit and to recover the filing fee from the Tenant.

The Landlords appeared for the hearing and provided affirmed testimony as well as written evidence prior to the hearing. The Tenant failed to appear for the 30 minute duration of the hearing and provided no written evidence in advance of the hearing.

As a result, I turned my mind to the service of the paperwork by the Landlords. The Landlords testified that they had served a copy of the Application and Notice of Hearing documents by attaching them to the Tenant’s door on May 13, 2014.

Section 89 of the Act determines the methods of service in relation to an Application. In relation to the Landlords’ Application for an Order of Possession, I am able to accept the Landlords’ method of service (by attaching these documents to the Tenant’s door) in accordance with Section 89(2) (d) of the Act. Section 90(c) of the Act provides that a document attached to a door is deemed to have been received three days later. Therefore, I find that the Tenant was served with the Landlords’ Application for an Order of Possession on May 16, 2014.

However, an Application for a monetary claim cannot be served by attaching it to the door and is limited to the methods stipulated by Section 89(1) of the Act. Therefore, as the Landlords’ monetary Application has not been served to the Tenant in accordance with the Act, I am unable to consider this portion of the Landlords’ Application which I dismissed with leave to reapply.

Issue(s) to be Decided

Are the Landlords entitled to an Order of Possession for unpaid rent?

Background and Evidence

The Landlords testified that this tenancy began on February 15, 2014 for a fixed term of three months. A written tenancy agreement was completed and rent is payable under the agreement in the amount of \$1,200.00 per month on the first day of each month.

The Tenant provided the Landlords with a security deposit in the amount of \$600.00 at the start of the tenancy but the Landlords testified that they did not cash the cheque.

The Landlords testified that the Tenant failed to pay rent for April, 2014 in the amount of \$1,200.00. As a result, the Landlords served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on April 26, 2014, by attaching it to the Tenant's door.

The Notice was provided as evidence for this hearing and shows an expected date of vacancy of May 6, 2014 with an amount of \$1,200.00 outstanding for unpaid rent due on April 1, 2014.

The Landlords testified that the Tenant also owes outstanding rent for May and June, 2014.

Analysis

I have considered the undisputed testimony and evidence provided by the Landlords and I make the following determination.

Having examined the Notice, I find that the contents complied with the requirements of Section 52 of the Act.

Sections 46(4) and (5) of the Act explain that within five days of a Tenant receiving a Notice, a Tenant must pay the overdue rent or make an Application to dispute the Notice; if the Tenant fails to do either, then they are conclusively presumed to have accepted the Notice and they must vacate the rental unit on the effective date of the Notice.

I accept that the Tenant was served with the Notice by attaching it to his door on April 26, 2014 pursuant to Section 88(g) of the Act. As a result, I find that the Tenant was deemed served with the Notice on April 29, 2014 pursuant to Section 90(c) of the Act. Therefore, the Tenant had until May 4, 2014 to pay the overdue rent or apply to dispute the Notice as required by the Act. There is no evidence that the Tenant did either of these.

As a result, I find that the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice (May 9, 2014), and therefore the Landlords are entitled to an Order of Possession.

Under the authority afforded to me by Section 72(1) of the Act, I am able to consider the Landlords' claim for the recovery of the filing fee. As a result, I find that as the Landlords were successful in their request for an Order of Possession, the Tenant is liable for this fee.

Conclusion

As the effective date of the Notice has now passed, I grant the Landlords an Order of Possession effective **two days after service on the Tenant**. This order may then be filed and enforced in the Supreme Court as an order of that court if the Tenant fails to vacate the rental unit.

As I am unable to determine if the Landlords have monies from the Tenant's security deposit, I find it is more appropriate to issue the Landlords with a Monetary Order in the amount of \$50.00. This order must be served onto the Tenant and if the Tenant fails to make this payment, the order may be enforced in the Small Claims (Provincial) court.

For the reasons above, the Landlords' Application for a Monetary Order 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: June 27, 2014

Residential Tenancy Branch

