



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR OPC MNSD FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act for orders as follows:

- a) A monetary order pursuant to Section 67;
- b) An Order of Possession pursuant to Sections 46 or 47, and 55;
- c) An Order to retain the security deposit pursuant to Section 38; and
- d) An order to recover the filing fee pursuant to Section 72.

SERVICE:

Both parties attended. The landlord provided proof of service of the ten day Notice to End Tenancy dated April 5, 2014 and said she had also personally served a one month Notice dated March 1, 2014 for cause. The tenant denied receiving the one month Notice until they saw it in the Application. The parties agreed that the Application was served by posting it on the door. I find insufficient evidence that the tenant was properly served with the documents according to sections 88 and 89 of the Act. Both parties were advised of the service problems in the hearing.

Issue(s) to be Decided:

The tenant was issued two Notices to End Tenancy, one dated April 5, 2014 for unpaid rent and the second dated March 1, 2014 for cause. Has the landlord now proved on a balance of probabilities that they are entitled to an Order of Possession on either ground and to a Monetary Order for rental arrears and filing fee?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenant commenced living in the premises on January 15, 2014. It is undisputed that the tenant owes rent and utilities and the landlord served a ten day Notice showing the tenant owed \$1600 in rent for April 2014 plus \$800 in utilities. However, the evidence is that the tenant paid the

outstanding rent in two payments of \$800 but did not pay the utilities. When the landlord accepted the outstanding rent payment, she said she gave a receipt (which the tenant denies). However, she did not note on the receipt that acceptance of the payment was for “use and occupancy only” and was not reinstating the tenancy.

The tenant agreed that they had paid rent late in February March and April but said they had discussed it and had an agreement from the landlord and did not know about the one month Notice to End Tenancy for cause until they got the Application with the hearing package posted on the door. The other grounds listed on the one month Notice were vigorously denied by the tenant who said any damage was pre-existing and they are actually fixing the house and paying for materials; they said there were about 30 dogs living in the house prior to their tenancy. There was no supporting documentation regarding damage to the property provided in the file. The landlords said they could not get into the property to take pictures.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Order of Possession

The onus of proof is on the applicant landlord to show on a balance of probabilities that the Tenancy should be ended either for unpaid rent or for cause. While the weight of the evidence is that there is unpaid rent, I find the landlord accepted rent after serving the 10 day Notice without qualifying that the acceptance was only for use and occupancy of the premises and did not reinstate the tenancy (see Residential Policy Guideline 11). The tenant thought the matter had been resolved when he paid the rent. Therefore I find that the landlord is not entitled to an Order of Possession pursuant to the 10 day Notice.

I find insufficient proof of service of the one month Notice to End Tenancy for cause. The tenant denies it was served on them and the landlord did satisfy the onus of proving service. Therefore I find the landlord not entitled to an Order of Possession on the basis of the one month Notice.

Monetary Order

Although there are rental arrears, I find the landlord not entitled to a Monetary Order to recover rental arrears or utilities as the Application was not served as required by section 89 of the Act. Posting on the door is not a valid method of service for the Application if a monetary order is requested. The landlord is advised that they may issue a further 10 day Notice for outstanding rent which would likely be successful

provided the legislation is followed regarding service, giving receipts and providing proof.

The tenant listed some issues he had with the property. He was advised to bring his own application to have his issues considered for a rebate of rent or a monetary order. However, he is advised under section 26 of the Act that rent must be paid in full and on time, whether or not the landlord is fulfilling obligations; otherwise another ten day Notice may be issued for non payment of rent. Section 33 has some provisions regarding compensation for emergency repairs.

Conclusion:

I dismiss the application of the landlord for the reasons set out above and find they are not entitled to recover the filing fee for this application. I give them leave to reapply for monies owed for rent and utilities.

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 10, 2014

Residential Tenancy Branch

