



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MND, MNR, MNSD, MNDC, FF, O

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

Although served with the Application for Dispute Resolution and Notice of Hearing which was posted at the rental unit on June 17, 2014, and deemed delivered on June 20, 2014, on the Tenant did not appear.

Issue(s) to be Decided

- Has the application for dispute resolution been sufficiently served for the purposes of the *Residential Tenancy Act*?
- 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 month-to-month tenancy commenced June 1, 2013. The monthly rent of \$1100.00 was to be paid on the first day of the month. In addition to the rent, the tenant was to pay 60% of the utilities for the house in which the rental unit is located. The tenant paid a security deposit of \$550.00 however, during the tenancy the landlord returned \$70.00 to the tenant leaving a balance of \$480.00.

The landlord testified that the tenant was served with a 10 Day Notice to End Tenancy for Non-Payment of Rent when it was posted to at the rental unit on June 3, 2014. 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 issued this application for dispute resolution on June 16, 2014. He attended at the rental unit on several occasions but never found the tenant at home. On June 17 he posted the application for dispute resolution and notice of hearing at the

rental unit. When he checked back at the rental unit the documents had been removed. The landlord was never able to meet with or talk to the tenant.

The landlord testified that the tenant had not paid the rent for June and July and the arrears total \$2200.00. He also testified that as of the date of filing the application for dispute resolution the unpaid utilities totaled \$353.49.

The landlord testified that in January of 2014 there was fire in the rental unit caused by the tenant's son. The landlord's insurance company refused coverage on the basis that the loss was caused by his tenant's "Illegal Substance Activity", an excluded risk under his policy. The landlord testified that the glass in the new sliding glass door must be replaced and he estimates the cost of the repair at \$700.00. The flooring that was damaged was three years old. The landlord estimates that the cost of replacing the flooring will be approximately \$1000.00.

Analysis

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

Section 89 of the *Residential Tenancy Act* does not allow an application for dispute resolution claiming a monetary order to be served by attaching a copy of the document to a door or other conspicuous place at the address at which the tenant resides. However, section 71(2) allows an arbitrator to order that a document has been sufficiently served for the purposes of the Act on a date that the arbitrator specifies or that a document not served in accordance with section 89 is sufficiently given or served for the purposes of the Act. Considering that the landlord was going to the rental unit frequently, observed that the tenant was still living in the unit, and subsequently observing that the documents were removed from where they had been posted I find that the Application for Dispute Resolution and Notice of Hearing were sufficiently given or served for the purposes of the Act on June 20, 2014.

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.

In addition to the damages described above the landlord testified that there will be substantial cleaning costs. However, the application for dispute resolution only claimed damages in the amount of \$4053.49. An arbitrator cannot award an amount greater than the amount claimed on an application for dispute resolution. The landlord may always issue and serve a new application for dispute resolution claiming any additional costs that may accrue.

I find that the landlord has established a total monetary claim of \$4103.49 comprised of arrears of rent for June and July in the amount of \$2200.00, unpaid utilities in the amount of \$353.49, damages in the amount of \$1500.00, and the \$50.00 fee paid by the landlord for this application. I order that the Landlord retain the deposit of \$480.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of \$3623.49.

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 \$3623.49 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: July 18, 2014

Residential Tenancy Branch

