



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, FF

Introduction

This hearing dealt with two related applications. One was the tenant's application for an order setting aside a 10 Day Notice to End Tenancy for Non-Payment of Rent. The other was the landlord's application for an order of possession and a monetary order.

Although he was served with the landlord's application for dispute resolution and notice of hearing when it was given to his wife, an adult who resides with the tenant in the rental unit, and he was the applicant on his own application, the tenant did not appear at the hearing.

As the parties and circumstances are the same on both applications, one decision will be rendered for both.

Issue(s) to be Decided

- Is the 10 Day Notice to End Tenancy for Non-Payment of Rent dated October 11, 2014 valid?
- If so, on what terms should the order of possession be granted?
- Is the landlord entitled to a monetary order and, if so, in what amount?

Background and Evidence

The month-to-month tenancy commenced on a date near the end of July 2014. There was not a written tenancy agreement. The monthly rent of \$800.0 is due on the first day of the month. The tenant paid a security deposit of \$400.00.

The tenant paid the August rent on August 4 and the September rent on September 8. When the tenant had not paid the October rent by October 11 the landlord issued and served a 10 Day Notice to End Tenancy for Non-Payment of Rent.

On October 15 the tenant served the landlord with this application for dispute resolution.

The landlord testified that the only payment the tenant has made towards the October and November rent is a payment of \$440.00 on November 13 and that the arrears of rent for this period total \$1160.00. The landlord and her daughter both testified that the tenant promised many times to pay the arrears but has never followed through on his promises.

Analysis

I find that there were arrears of rent owed when the landlord served the tenant with the 10 Day Notice to End Tenancy and the tenant did not pay the arrears of rent within the time limited for doing so. Accordingly, the landlord is entitled to an order of possession effective two days after service on the Tenant.

The tenant's application for an order setting aside the notice to end tenancy is dismissed.

The landlord's application for dispute resolution was served on the tenant by giving it to the tenant's wife, who resides in the rental unit with the tenant, on November 4, 2014.

Section 89(c) of the *Residential Tenancy Act* provides that an application by a landlord under section 55 for an order of possession may be served on a tenant by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant.

Section 89(1) sets out the ways in which an application for a monetary order may be served on a tenant. They are:

- personal service on 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,
- by substitutional service as ordered by the arbitrator pursuant to section 72(1).

Section 71(2) states that an arbitrator may also make the following orders regarding service:

- That a document must be served in a manner the arbitrator considers necessary, despite sections 88 and 89.
- That a document has been sufficiently served for the purposes of the *Act* on a date specified by the arbitrator.
- That a document not served in accordance with section 88 or 89 is sufficiently given or served for the purposes of the *Act*.

Having considered the landlord's evidence I find that the landlord's application for a monetary order was sufficiently served for the purposes of the *Act* when it was given to his wife on November 4, 2014.

I find that the landlord has established a total monetary claim of \$1210.00 comprised of arrears of rent for October and November in the amount of \$1160.00 and the \$50.00

fee paid by the landlord for this application. I order that the Landlord retain the deposit of \$400.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of \$810.00.

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 \$810.00 has been granted. If necessary, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.
- c. The tenant's application has been dismissed.

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: November 25, 2014

Residential Tenancy Branch

