



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing dealt with a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and late fees. The tenant did not appear at the hearing. The landlord provided evidence that the hearing documents were sent to the tenant at the rental unit address via registered mail on March 20, 2015. A search of the registered mail tracking number showed that the registered mail remains unclaimed. The landlord confirmed that the tenant continues to reside at the rental unit.

Section 90 of the Act deems a person to have received documents five days after mailing, even if the recipient refuses to accept or pick up their mail, so that a party to a dispute cannot avoid service.

Based on the above, I found the tenant deemed to have received notification of this proceeding and I continued to hear from the landlord without the tenant present.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for unpaid rent and late fees?

Background and Evidence

The landlord testified that the tenancy commenced in 1993 pursuant to a verbal agreement. The landlord did not collect a security deposit. The landlord testified that the tenant is responsible for paying for hydro and gas bills for the property plus the monthly rent. The landlord testified that the tenant had been paying rent of \$525.00 per month up until the month of September 2014, although \$100.00 of the rent for September 2014 was not paid. The landlord testified that he sought to increase the monthly rent to \$550.00 starting October 2014 by way of a written letter given to the tenant but the tenant has not paid rent from October 2014 onwards.

On November 27, 2014 the landlord mailed a letter to the tenant advising the tenant that he had to vacate the rental unit due to unpaid rent. The landlord provided a copy of the letter as evidence for this proceeding; however, it is not a Notice to End Tenancy in the approved form. During the hearing the landlord testified that a 10 Day Notice to End Tenancy for Unpaid Rent was mailed to the tenant with the hearing package sent to him on March 20, 2015. The landlord stated that he did not have a copy of the 10 Day Notice before him and he was uncertain as to whether he had kept a copy. In any event, the landlord could not provide me with information contained on the 10 Day Notice during the hearing.

The landlord requested a Monetary Order for the \$100.00 in rent owed for September 2014 plus rent for each month thereafter at the rate of \$550.00 per month, plus late fees of \$25.00 per month.

Analysis

Under the Act, where a landlord wishes to end a tenancy the landlord must serve the tenant with a Notice to End Tenancy in the approved form. The letter dated November 27, 2014 is not in the approved form and does not contain information that would appear on a Notice to End Tenancy in the approved form. Therefore, I find the letter is ineffective in ending the tenancy.

Without evidence that a Notice to End Tenancy in the approved form was served upon the tenant I dismiss the landlord's request for an Order of Possession with leave to reapply.

With respect to the landlord's monetary claim for unpaid rent, since the tenancy agreement was verbal, I accept the undisputed testimony of the landlord as to the amount of rent required of the tenant every month. However, I find the landlord's attempt to increase the rent from \$525.00 to \$550.00 per month non-compliant with the rent increase provisions of the Act since the amount of the increase surpasses the 2014 allowable increase of 2.2% and the landlord did not use a Notice of Rent Increase as required. Therefore, I find the landlord entitled to recover unpaid rent for the months of October 2014 onwards at the rate of \$525.00 per month.

Since the tenant remains in possession of the rental unit and has not paid rent since September 2014 I award the landlord unpaid rent in the amount \$100.00 for September 2014 plus \$3,675.00 [\$525.00 x 7 months] for the months of October 2014 through April 2015. I also award the landlord recovery of the \$50.00 filing fee he paid for this

Application. Therefore, the landlord is provided a Monetary Order in the sum of \$3,825.00 serve upon the tenant and enforce as necessary.

I have denied the landlord's request for late fees as the Residential Tenancy Regulations provide that in order for a landlord to charge late fees the tenancy agreement must contain a valid late fee clause. In the absence of a written tenancy agreement, I find there is insufficient evidence of such an agreement.

Conclusion

The landlord's request for an Order of Possession has been dismissed with leave.

The landlord has been provided a Monetary Order to serve and enforce in the total amount of \$3,825.00 for recovery of unpaid rent up to and including the month of April 2015 and the filing fee.

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: April 29, 2015

Residential Tenancy Branch

