



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that on April 21, 2015, in the morning, he went to the rental unit property. The tenant was in the home but would not come to the door. While the tenant stood at the window the landlord held the hearing documents up to the window. The landlord told the tenant she was being served with Notice of a hearing. As the tenant would come out to accept the documents the landlord placed them on the ground.

Residential Tenancy Branch (RTB) policy suggests that if the person declines to take a copy of the documents they may be left near the person so long as the person serving informs the person being served of the nature of the document being left near them. As the landlord told the tenant she was served with the documents for the hearing I find, pursuant to section 71(b) of the Act that the tenant has been sufficiently served with Notice of this hearing.

The tenant did not appear at the hearing.

Jurisdiction

The landlord testified that that a tenancy was in effect until July 12, 2012 when a flood occurred in the rental unit. The tenant had to vacate. The landlord recommended the tenant to another landlord, who then rented a unit to the tenant. Restoration had been taking place in the unit.

At one point the tenant (respondent) attempted to move back into the unit. The repairs had not been completed and the tenant did not remain in the unit.

The landlord supplied copies of documents from his insurer setting out the details of a claim for water and mold damage between July 5, 2013 and July 12, 2014. A proof of loss document issued by the insurer indicated an original loss date of July 12, 2012.

Restoration work has been on-going at the unit. The landlord believes the tenant breached the lock box at the unit and in mid- March 2015 she took possession of the unit. The landlord has repeatedly attempted to have the tenant leave as he no longer has a tenancy agreement with her. The tenant has changed the locks to the rental unit. No rent has been paid to the landlord since the tenancy ended when the flood occurred in July 2012.

From the evidence before me I find, pursuant to section 44(f) of the Act, that the tenancy ended on July 12, 2012, when the flood occurred.

When the tenant moved back into the unit, in the absence of agreement by the property owner and in the absence of rent payments, I find that a tenancy was not established.

Therefore, I decline jurisdiction. The rights and obligations of the Residential Tenancy Act do not apply to either party.

Conclusion

Jurisdiction is declined. A tenancy has not been established.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 04, 2015

Residential Tenancy Branch