



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPB, MNR, FF

Introduction

This hearing dealt with an application by the landlords for an order of possession and a monetary order. Although served with the Application for Dispute Resolution and Notice of Hearing when they were posted to the door of the rental unit on July 22, 2015, the tenants did not appear.

Issue(s) to be Decided

Are the landlords entitled to an order of possession and, if so, on what terms?

Are the landlords entitled to a monetary order and, if so, in what amount?

Background and Evidence

This tenancy commenced February 20, 2012. There was a written tenancy agreement. The parties signed a new tenancy agreement in February 2014 for a one year term. This agreement provided for a monthly rent of \$1000.00 due on the first day of the month.

The landlord did not file a copy of the tenancy agreement in evidence. He testified that the agreement stated that at the end of the term the tenancy “may continue on a month-to-month basis or another fixed term”.

The tenant did not pay the June rent. The landlord served the tenants with a 10 Day Notice to End Tenancy for Non-Payment of Rent by personal service on June 25. The landlord testified that they have not received any rent since then nor have they been served with an application for dispute resolution by the tenants.

The landlords did not file a copy of the 10 Day Notice to End Tenancy nor did they apply to end the tenancy based upon the tenants’ failure to pay rent.

Analysis

Section 55(2)(c) of the *Residential Tenancy Act* allows a landlord to apply for an order of possession when the tenancy agreement is fixed term tenancy agreement that provides that the tenant will vacate the rental unit at the end of the fixed term. The landlord’s evidence is that this

agreement allows the tenancy to continue on a month-to-month basis at the expiry of the term. As a result, I cannot grant the landlords an order of possession based upon this section

Every section of the *Residential Tenancy Act* that allows a landlord to serve a tenant with a notice to end tenancy of one kind or another includes a provision that if the tenant does not dispute the notice by filing an application for dispute resolution within the time limit for doing he or she is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date. If they do not section 55(2)(b) allows a landlord to apply for an order of possession.

In this case that landlord had not applied for an order of possession based upon the 10 Day Notice to End Tenancy for Non-Payment of Rent. An arbitrator cannot grant relief that has not been requested, and more importantly, of which the other side has not been notified by the service of an application for dispute resolution including that request upon them.

The landlords' application for an order of possession based upon the tenants' breach of an agreement is dismissed. The landlords have the legal right to serve a new notice to end tenancy based upon any other relevant ground permitted by the legislation, such as a 10 Ten Notice to End Tenancy for Non-Payment of Rent, and to take such enforcement action as is set out in the legislation.

With regard to the landlords' application for a monetary order for arrears of rent, that application must be dismissed with leave to re-apply. Section 89 sets out the manner in which various applications may be served on a respondent. An application for an order of possession may be served by attaching a copy to a door or other conspicuous place at the address at which the tenant resides but an application for a monetary order may not be served in this manner. An application for a monetary order should be served by personal service or by registered mail.

Conclusion

The landlords' application is dismissed, for the reasons and upon the terms set out above.

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: September 28, 2015

Residential Tenancy Branch

