



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding M'AKOLA HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OPR, MNR, MNSD, FF

Introduction

This hearing dealt with cross applications via teleconference call. The tenant applied to cancel a 1 Month Notice to End Tenancy for Cause. The landlord applied for an Order of Possession and Monetary Order for unpaid rent; and, authorization to retain all or part of the tenant's security deposit. The tenant did not appear at the hearing despite leaving the teleconference call open for approximately 15 minutes.

The landlord acknowledged that the tenant had served the landlord with his Application for Dispute Resolution. Since the tenant did not appear at the hearing I dismissed the tenant's application without leave.

The landlord testified that the landlord's Application was posted to the rental unit door on October 29, 2015. Pursuant to section 90 of the Act, the tenant is deemed to have received the landlord's application three days after posting.

The landlord stated that the landlord has not seen the tenant at the property for some time but the landlord has yet to determine whether the tenant has abandoned or vacated the rental unit. The landlord orally requested that an Order of Possession be provided in the event the tenant has not already vacated or abandoned the unit.

I did not consider the landlord's monetary claim against the tenant as section 89(1) of the Act does not permit service of a monetary claim by posting on the door of the rental unit. Posting on the door of a rental unit is sufficient for applying for an Order of Possession only. The landlord's monetary claim was dismissed with leave to reapply and I continued to consider the landlord's request for an Order of Possession.

I amended the tenant's application to name the landlord as identified on the Notices to End Tenancy.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

The tenancy started September 1, 2014 on a month to month basis. The landlord collected a security deposit of \$250.00. The tenant was required to pay subsidized rent of \$213.00 on the 1st day of every month.

The tenant filed to dispute a 1 Month Notice to End Tenancy for Cause (1 Month Notice) on September 9, 2015 indicating that he received the 1 Month Notice on September 9, 2015. As stated previously in this decision, the tenant's application to cancel the 1 Month Notice was dismissed due to the tenant's failure to appear at the hearing scheduled to hear his dispute. I noted that I had not received a copy of the subject 1 Month Notice from the tenant or the landlord. The landlord testified that it had been posted on the door of the rental unit on August 24, 2015 and it had a stated effective date of September 30, 2015. The landlord stated that the tenant is often not at home and that may explain why he submitted that he did not receive the 1 Month Notice until September 9, 2015.

Since the tenant had filed to dispute the 1 Month Notice and was still in occupation of the rental unit in October 2015 the landlord expected the tenant to pay rent for the month of October 2015. On October 13, 2015 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) on the door of the rental unit indicating rent of \$213.00 was outstanding as of October 1, 2015 with a stated effective date of October 23, 2015. The tenant did not file to dispute the 10 Day Notice but the landlord testified that the tenant paid \$100.00 toward the outstanding rent on October 19, 2015.

The landlord requested recovery of the filing fee by way of deducting \$50.00 from the tenant's security deposit.

The landlord's documentary evidence included copies of: the tenancy agreement; the 10 Day Notice; and, a worksheet indicating the tenant made a partial payment of \$100.00 on October 14, 2015.

Analysis

Under the Act, a tenant in receipt of a Notice to End Tenancy has a certain amount of time to dispute the Notice by filing an Application for Dispute Resolution, depending on the type of Notice served upon the tenant. A Notice to End Tenancy may be served by posting on the door of the rental unit and I accept the undisputed evidence before me that the landlord posted Notices to End Tenancy on August 24, 2015 and October 13, 2015: a 1 Month Notice and a 10 Day Notice, respectively.

In filing his Application for Dispute Resolution, the tenant submitted that he received the 1 Month Notice on September 9, 2015. If I were to accept that submission the effective date of the 1 Month would change to read October 31, 2015 under section 53 of the Act. As to the 10 Day Notice, the tenant made no submission as to when he received it and pursuant to the deeming provision of section 90 of the Act, I find the tenant is deemed to have received the 10 Day Notice three days after posting or October 16, 2015. Therefore, the effective date of the 10 Day Notice changes to read October 26, 2015 under section 53 of the Act.

Pursuant to section 55 of the Act, a landlord is entitled to an Order of Possession in various circumstances including: where a tenant files to dispute a Notice to End Tenancy, the tenant's application is dismissed and the landlord orally requests an Order of Possession at the scheduled hearing; and, where a tenant does not file to dispute a Notice to End Tenancy and the landlord files an application seeking an Order of Possession.

In this case, I find that both of the above provisions apply. The tenant's application to dispute the 1 Month Notice was dismissed and the landlord orally requested an Order of Possession during the scheduled hearing. Also, the tenant did not dispute the 10 Day Notice and the landlord filed an application seeking an Order of Possession. Since the effective date on both of the Notices to End Tenancy have since passed I provide the landlord with an Order of Possession to serve and enforce if the tenant has not already abandoned or vacated the rental unit. The Order of Possession is effective two (2) days after service.

I award the landlord recovery of the \$50.00 filing fee and authorize the landlord to deduct \$50.00 from the security deposit in satisfaction of this award.

Conclusion

The tenant's application has been dismissed.

The landlord has been provided an Order of Possession effective two (2) days after service to serve and enforce as necessary.

The landlord has been authorized to deduct \$50.00 from the tenant's security deposit to recover the filing fee paid by the landlord.

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 18, 2015

Residential Tenancy Branch

