



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF
 CNR

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord originally filed through the Direct Request Process on October 19, 2015, seeking an Order of Possession for unpaid rent and utilities, and a Monetary Order for: unpaid rent and utilities. The Landlord's application was scheduled for a participatory hearing for the same time as the Tenant's application was scheduled to be heard. As a result, the Landlord's application reverted to a regular application for Dispute Resolution and was amended to include a request to recover the filing fee plus November and December 2015 rent.

The Tenant filed on October 15, 2015, seeking an Order to cancel the 10 Day Notice to end tenancy issued for unpaid rent or utilities.

The hearing was conducted via teleconference and was attended by the Landlord. No one was in attendance on behalf of the Tenant. The Landlord provided affirmed testimony that they initially tried to serve the Tenant with notice of their application in person; however, the Tenant refused to answer the door. As a result the Landlord served the Tenant with copies of his application and notice of hearing documents on October 22, 2015 via registered mail. Copies of the Canada Post receipts were submitted into evidence.

Residential Policy Guideline 12 (11) provides that where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing. I agree with this policy.

Section 90(a) of the *Residential Tenancy Act* (the "Act") states that a document served by mail is deemed to have been received five days after it is mailed. A party cannot avoid service by failing or neglecting to pick up mail and this reason alone cannot form the basis for a review of this decision.

Based on the undisputed evidence of the Landlord, I find the Tenant was deemed served notice of this proceeding as of October 27, 2015, pursuant to section 90 of the *Act*. Therefore, I proceeded in the absence of the Tenant.

Issue(s) to be Decided

1. Should the Tenant's application be dismissed with or without leave to reapply?
2. Has the Landlord regained possession of the rental unit?
3. Has the Landlord proven entitlement to a Monetary Order?

Background and Evidence

The Landlord submitted evidence that the Tenant entered into a written fixed term tenancy agreement that began on November 1, 2013 and switched to a month to month tenancy agreement after November 1, 2014. Rent of \$1,800.00 was payable on the first of each month and on November 1, 2013 the Tenant paid \$900.00 as the security deposit.

The Landlord submitted evidence that the Tenant was regularly paying their rent late and began to accumulate a balance owed to the Landlord. The Landlord testified that on October 10, 2015 they posted a 10 Day Notice to the Tenant's door listing \$8,450.00 as the unpaid rent that was due on October 1, 2015.

The Landlord stated that the Tenant remained in the rental unit until December 2, 2015 and did not pay the \$1,800.00 October rent or the \$1,800.00 November 2015. As a result the Landlord sought a total amount for unpaid rent of \$12,050 (\$8,450.00 + \$1,800.00 + \$1,800.00).

The Landlord confirmed that he regained full possession of the rental unit on December 2, 2015 and no longer requires an Order of Possession. He asserted that the unit was left needing cleaning and repairs. He submitted that they are currently working on the repairs and argued that the repairs will not be completed in time to re-rent the unit anytime in December 2015.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or

their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Tenants' Application

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing.

Rule 10.1 of the Rules of Procedure provides as follows:

10.1 Commencement of the hearing. The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the absence of the applicant Tenant, the telephone line remained open while the phone system was monitored for twelve minutes and no one on behalf of the applicant Tenant called into the hearing during this time. Accordingly, in the absence of any submissions from the applicant Tenant, I order the Tenant's application dismissed, without liberty to reapply.

Landlord's Application

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant is deemed to have received the 10 Day Notice on October 13, 2015, three days after it was posted to the door. Therefore, the effective date of the Notice would be **October 23, 2015**.

The Tenant did not pay the rent; rather, he filed an application to dispute the Notice and then did not appear at the hearing. The Tenant vacated the rental unit as of December 2, 2015. As a result, the Landlord withdrew his request for an Order of Possession.

Section 26 of the Act stipulates that a tenant must pay rent in accordance with the tenancy agreement; despite any disagreements the tenant may have with their landlord.

The Landlord claimed for accumulated unpaid rent of \$8,450.00 that was due October 1, 2015, in accordance with section 26 of the Act. Based on the undisputed evidence I award the Landlord accumulated unpaid rent up to October 2015, in the amount of **\$8,450.00**.

As noted above this tenancy ended **October 23, 2015**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy and loss of rent, not rent for November 2015 and December 2015. The Landlord did not regain possession of the unit until December 2, 2015 and is now cleaning and repairing the rental unit. The Landlord will then have to find a new tenant once the unit is repaired; therefore, I award the Landlord use and occupancy and any loss of rent for the entire months of November and December 2015, in the amount of **\$3,600.00** (2x \$1,800.00).

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$100.00** filing fee, pursuant to section 72(1) of the Act.

Conclusion

The Tenant did not appear at the hearing and his application was dismissed, without leave to reapply. The Landlord appeared and withdrew his request for an Order of Possession. The Landlord was successful in proving his claim for monetary compensation and was granted **\$12,150.00** (\$8,450.00 + \$3,600.00 + \$100.00).

The Landlord has been issued a Monetary Order in the amount of **\$12,150.00**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with Small Claims Court and enforced as an Order of that Court.

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: December 15, 2015

Residential Tenancy Branch

