



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, CNR, MNDC, FF

Introduction

This hearing dealt with two related applications. One was the landlord's application for an order of possession based upon a 10 Day Notice to End Tenancy for Non-Payment of Rent and a monetary order. The other was the tenant's application for an order setting aside that notice to end tenancy and a monetary order.

Although served with the landlord's Application for Dispute Resolution and Notice of Hearing when it was posted to the door of the rental unit and despite being the applicant on one of the applications before me, the tenant did not appear.

The written evidence filed by the tenant was considered in the preparation of this decision. In particular, the landlord had not filed a copy of the 10 Day Notice to End Tenancy for Non-Payment of Rent with his application for dispute resolution but the tenant had.

Issue(s) to be Decided

- Is the notice to end tenancy valid?
- Is either party entitled to a monetary order and, if so, in what amount?

Background and Evidence

This month-to-month tenancy commenced about a year ago. The monthly rent, which is due on the 15th day of the month, is \$380.00. The landlord collected a security deposit of \$200.00.

On November 4, 2015, the landlord issued and personally served the tenant with a 10 Day Notice to End Tenancy for Non-Payment of Rent. The tenant filed his application disputing that notice on November 9, 2015.

The tenant paid the landlord \$380.00 on November 18 and \$350.00 on December 18. The landlord gave the tenant receipts for both payments marked "for use and

occupancy only". The landlord testified that in addition to the \$30.00 owed for December the arrears for September and October remain unpaid.

Analysis

As the tenant did not appear at the hearing his application is dismissed.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the arbitrator must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing, the landlord makes an oral request for an order of possession.

The landlord did make an oral request for an order of possession. The landlord is entitled to an order of possession effective two days after service on the tenant.

As explained to the landlord in the hearing, a monetary order cannot be granted when the Application for Dispute Resolution was served on a tenant by being posted to the rental unit; only if served by personal service or registered mail. (Section 89) Accordingly, the landlord's claim for a monetary order is dismissed with leave to re-apply.

As the landlord was substantially successful on his application he is entitled to reimbursement from the tenant of the \$50.00 fee he paid to file it. Pursuant to s.72 (1) this amount may be deducted from the security deposit held by the landlord.

Conclusion

An order of possession effective two days after service on the tenant has been granted to the landlord. If necessary, this order may be filed in the Supreme 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: January 08, 2016

Residential Tenancy Branch

