



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR MNSD FF

Introduction:

This was an Application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for an Order of Possession and a monetary order for rent arrears and filing fee. Only the landlord attended the hearing and gave sworn testimony that he served the tenant with the Notice to End Tenancy dated January 5, 2016 to be effective January 15, 2016 by posting it on her door. He also testified that he served the Application/Notice of Hearing on her by registered mail (receipt in evidence) but she refused to claim it. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

Preliminary Matter:

The landlord requested his name on the Application be corrected as he had inadvertently made a typographical error and typed the first letter of his first name twice. I corrected the typo.

Issue:

Has the landlord proved on the balance of probabilities that rent is owed and the amount? Is he now entitled to an Order of Possession and a Monetary Order?

Background and Evidence:

The landlord provided evidence that the tenant agreed to rent a unit from November 5, 2015 at a rent of \$1250 a month. In December 2015, she asked to rent the whole house for \$1700 a month instead. He said she sublet the basement and has been collecting rent from the downstairs tenants. However, she never paid any security deposit and has paid no rent since the beginning of the tenancy. A lease is included in evidence with the above terms but apparently the tenant never returned the signed lease.

He requests a monetary order for \$8050 plus the filing fee. This sum is calculated as \$1250 for November 2015 plus \$1700 from December 2015 to March 2016. He said the downstairs tenants said the tenant appeared to vacate a few weeks ago but she changed the locks and returned no keys so the landlords cannot get into the unit. He requests an Order of Possession so they may legally enter and regain possession of the unit. He said the downstairs tenants will likely stay and become their tenants now.

Analysis:

Order of Possession:

Section 26 of the Act provides that a tenant must pay rent when due. Section 46 of the Act states that a landlord may give a tenant a Notice to End Tenancy effective ten days from service if the rent is unpaid any date after it is due. Section 46(5) provides that if a tenant receives this 10 day Notice and does not pay the rent within 5 days or dispute the Notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice and must vacate the premises. I find this tenant has not paid rent when due and has not disputed the Notice so the tenancy is ended. I find the landlord entitled to an Order of Possession pursuant to section 55 of the Act.

Monetary Order:

I find the weight of the evidence is there was a tenancy whether or not the tenant returned the signed lease. Section 1 of the Act states that a tenancy agreement may be written, oral or implied. In this case, although the tenant did not sign a return the written lease, she took possession of the unit and later the whole house and even sublet the basement. Therefore, I find there was a tenancy agreement created. I note the unsigned agreement states it was a month to month tenancy (not a fixed term as the landlord thought). I find the landlord entitled to a Monetary Order for \$8050 for rental arrears and over holding rent to March 2015. I find him entitled to recover the filing fee for this Application.

Conclusion:

I find the landlord entitled to an Order of Possession effective two days from service and to a monetary order for \$8150 including the filing fee. No security deposit was paid.

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: March 02, 2016

Residential Tenancy Branch

