



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MND, MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order for damage to unit, unpaid rent and money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The tenant did not attend this hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that he served the tenant with the landlord's application for dispute resolution hearing package on May 27, 2016 by way of posting to the rental unit door where the tenant is residing. The landlord provided a signed, witness proof of service. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on May 30, 2016, three days after its posting.

Section 89(1) of the *Act* does not allow for the service of an application for a monetary award by posting a notice on a tenant's door. As the landlord did not serve the tenant with a copy of the dispute resolution hearing package in accordance with section 89(1) of the *Act*, I dismiss the landlord's application to obtain a monetary order for damage to the unit, unpaid rent, money owed or compensation for damage or loss and to recover the filing fee.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Background and Evidence

The landlord testified that this tenancy began on March 11, 2015 on a month-to-month basis. Rent in the amount of \$950.00 is payable on the first of each month. The tenant remitted \$475.00 for the security deposit at the start of the tenancy. The tenant continues to reside in the rental unit.

The landlord testified the tenant was personally served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice"), dated May 2, 2016, on the same date, at the rental unit. The landlord testified that upon personal receipt of the 10 Day Notice the tenant crumpled it up. Approximately two hours later on this same date the landlord posted the 10 Day Notice to the tenants door where the tenant is residing. In accordance with sections 88 and 90 of the *Act*, based on the undisputed testimony of the landlord, I find that the tenant was deemed served with the landlord's 10 Day Notice on May 2, 2016, the day it was personally served.

The 10 Day Notice for unpaid rent in the amount of \$950.00 due on May 1, 2016 indicates an effective move-out-date of May 12, 2016. The landlord claimed that the tenant has not paid any rent since the 10 Day Notice was issued .

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent or utilities the tenant may, within five days, pay the overdue rent or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does not pay the overdue rent or file an application, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and must move out of the rental unit.

Based on the landlord's testimony and the notice before me, I find that the tenant was served with an effective notice. As the tenant did not pay the overdue rent or file an application to dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must move out of the unit. As this has not occurred, I find that the landlord is entitled to a two (2) Day Order of Possession, pursuant to section 55 of the *Act*.

Conclusion

I dismiss the landlord's application for a monetary order for damage to the unit, unpaid rent, money owed or compensation for damage or loss and to recover the filing fee with leave to reapply.

I grant an order of possession to the landlord effective **two (2) days after service on the tenant.**

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: June 23, 2016

Residential Tenancy Branch