



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords for an order of possession, and for a monetary order for unpaid rent or utilities.

Both parties appeared gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Issues to be Decided

Are the landlords entitled to an order of possession for unpaid rent?
Are the landlords entitled to a monetary order?

Background and Evidence

The landlords submit that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on June 3, 2016 and post to the door of the tenant's residence on the same day. The landlords indicated that the outstanding rent was not paid within 5 days, nor did the tenant dispute the notice to end tenancy.

The tenant testified that they received the notice to end tenancy on June 3, 2016, as they found the notice to end tenancy posted to their door. The tenant indicated the rent was paid within 5 days as they are not deemed to have received the notice to end tenancy until three days after it was posted, which would be June 6, 2016. The tenant indicated they paid the rent on June 10, 2016.

The landlords indicated rent was paid on June 10, 2016; however, the unpaid utilities are still owed. The landlord stated that they do not need a monetary order for the utilities as they were granted a formal order at a previous hearing. However, they do not want the tenancy to continue and seek an order of possession.

Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

I accept the evidence of the tenant that they received the notice to end tenancy on June 3, 2016. While the evidence supports the notice was posted to the door, I find the deemed served provisions under the Act does not apply in this case as the tenant admitted the notice was received on June 3, 2016. Deemed served is only accepted when there is no evidence to the contrary.

Under the Act, the tenant had 5 days from when the notice to end tenancy was received to pay the outstanding rent. The tenant did not pay the outstanding rent within the 5 days, did not apply to dispute the notice within 5 days and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, which is June 18, 2016.

As the parties agreed that the tenant has paid occupancy rent for August 2016. I find that the landlords are entitled to an order of possession, pursuant to section 55 of the Act, effective **August 31, 2016 at 1:00pm**. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant

As there is no current outstanding rent and the landlords have a monetary order for the unpaid utilities, I find there is no need to issue a further monetary order.

Conclusion

The tenant failed to pay rent and did not file to dispute the notice to end tenancy. The tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy.

The landlords are is granted an order of possession.

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: August 03, 2016

Residential Tenancy Branch