



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession based on unpaid rent, a Monetary Order for unpaid rent and to recover the filing fee for the Application.

Only the Landlord, J.H., and his witness L.M. appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified that his other tenant, L.M., personally served the Tenant, C.S., with the Notice of Hearing and their Application on July 21, 2016. L.M. also testified that she personally served the Tenant, C.S., with the hearing package and the Notice of Hearing. She confirmed that she spoke with C.S. and informed her that the second package had to be provided to the other Tenant, A.B.

Under section 89(2) of the *Residential Tenancy Act*, personal service on C.S. is sufficient for an Order of Possession against both tenants, however, pursuant to section 89(1), service is only effective against C.S. in terms of the monetary Order.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Background and Evidence

Introduced in evidence was an incomplete copy of the residential tenancy agreement which indicated as follows: this one year fixed term tenancy began January 1, 2016 and monthly rent was payable in the amount of \$1,200.00. The Landlord testified that the page which was missing indicated that the Tenants paid a security deposit in the amount of \$450.00.

The Tenants failed to pay rent for the month of July 2016. The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on July 7, 2016 indicating the amount of \$1,200.00 was due as of July 1, 2016 (the "Notice").

Based on the testimony of L.M, I find that the Tenants were served with the Notice on July 7, 2016 by posting to the rental unit door. Section 90 of the Act provides that documents served in this manner are deemed served three days later. Accordingly, I find pursuant to section 88 of the *Residential Tenancy Act*, that the Tenants were served with the Notice as of July 10, 2016.

The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days of service, namely, July 15, 2016. The Notice also explains the Tenants had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The Landlord testified that the Tenants failed to dispute the Notice and also failed to pay rent for August 2016 and September 2016. The Landlord further testified that to his knowledge the Tenants have vacated the rental unit, however, it appears as though four people continue to reside in the basement of the rental unit.

Analysis

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

The Tenants have not paid the outstanding rent and did not apply to dispute the Notice and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find, pursuant to section 55 of the *Residential Tenancy Act*, that the Landlord is entitled to an Order of Possession effective **two days** after service on the Tenants. This Order

must be served on the Tenants and may be filed in the Supreme Court and enforced as an Order of that Court.

I find that the Landlord has established a total monetary claim of \$3,700.00 comprised of rent for July, August and September 2016 and the \$100.00 fee paid by the Landlord for this application. I grant the Landlord a Monetary Order, against the Tenant, C.S., under section 67 of the *Residential Tenancy Act* for the **\$3,700.00** owing. This Order must be served on C.S. and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

Conclusion

The Tenants 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 Landlord is granted an order of possession, may keep the security deposit and interest in partial satisfaction of the claim, and is granted a monetary order for the balance due.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: September 08, 2016

Residential Tenancy Branch