



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, MNSD, 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 unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord stated that the tenant was served with the notice of hearing package and the initial evidence package in person. The tenant confirmed receipt of this package.

The landlord stated that that the tenant was served with the late evidence package by placing it in the mail box on September 8, 2016. The tenant disputed this stating that no additional late evidence was received. The landlord was unable to provide sufficient evidence to satisfy me of service. As such, this portion of the landlord's late evidence is excluded from consideration for this hearing.

The tenant stated that the landlord was served with the submitted evidence package by placing it in the landlord's mail box on September 12, 2016. The landlord disputed this stating that no evidence was received from the tenant. The tenant was unable to provide sufficient evidence to satisfy me of service. As such, this portion of the tenant's evidence is excluded from consideration for this hearing.

The landlord also submitted additional late evidence, but was unable to provide any details of how and when it was served to the tenant. The tenant disputed that no additional late evidence was received from the landlord. The landlord was unable to provide sufficient evidence to satisfy me of service. As such, this portion of the landlord's additional late evidence is excluded from consideration for this hearing.

Preliminary Issue

During the hearing the landlord withdrew his monetary application and his request for recovery of the filing fee. The hearing proceeded strictly on the issue of a request for an order of possession for unpaid rent.

Issue(s) to be Decided

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

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties agreed that there was no signed tenancy agreement, but that the tenancy had begun on June 1, 2016. The monthly rent is \$2,100.00 and that a security deposit of \$1,050.00 was paid.

Both parties confirmed that the landlord served the tenant with the 10 Day Notice dated August 1, 2016. The landlord stated that the notice was served on August 1, 2016. The tenant confirmed that he received the 10 Day Notice dated August 1, 2016 on August 3, 2016.

The 10 Day Notice dated August 1, 2016 sets out that the tenant failed to pay rent of \$1,000.00 that was due on July 16, 2016 and that the tenant failed to pay utilities of \$25.00. Both parties agreed that a verbal agreement was made for the tenant to pay the outstanding rent on July 16, 2016. Both parties agreed that the tenant paid the outstanding rent of \$1,000.00 on August 5, 2016.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

Pursuant to section 46(4) of the Act states within five days of receiving the 10 Day Notice the tenant may pay the overdue rent and the notice has no effect. In this case, both parties confirmed that the landlord served the tenant with the 10 Day Notice dated August 1, 2016. The landlord claims that the 10 Day Notice was served on August 1, 2016. The tenant claims that the 10 Day Notice was received on August 3, 2016. In any event both parties agreed that the overdue rent was paid on August 5, 2016. As such, I find that upon being served the tenant paid the overdue rent on August 5, 2016 which is within the allowed 5 day time frame under the Act. As such, the 10 Day Notice dated August 1, 2016 is of no effect.

Conclusion

The landlord's application is dismissed. The 10 Day Notice dated August 1, 2016 is of no effect and the tenancy shall continue.

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: September 21, 2016

Residential Tenancy Branch