



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, 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;
- 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 the filing fee for this application from the tenant pursuant to section 72.

The tenant did not participate in the conference call hearing, which lasted approximately 25 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord indicated in the dispute details of the application that he was seeking unpaid rent for August and September in the total amount of \$5,450.00. The landlord clarified at the hearing that he was seeking a monetary order for unpaid rent and acknowledged that he did not check off the appropriate box on the application. The landlord seeks to amend his application to include a monetary order for unpaid rent.

Preliminary Issue – Service of Application for Monetary Order

During the hearing the landlord testified that the tenant had vacated the rental unit by August 1, 2016.

The landlord testified that on August 25, 2016 he left a copy of the landlord's application for dispute resolution hearing package at the rental unit with an adult who lived with the tenant. In accordance with section 89 of the *Act*, I find that the tenant was deemed served with the landlord's application on August 25, 2016, the day it was served.

Section 89 of the *Act* establishes that when a landlord serves an application for dispute resolution in relation to a monetary claim it must be served by leaving it directly with the tenant or by registered mail to a forwarding address provided by the tenant.

Based on the landlord's testimony that the application was personally served to an adult other than the tenant and in the absence of an application for substituted service, I find that the landlord has not served the application for a monetary order for dispute resolution to the tenant as required under the *Act*. Accordingly I do not grant the landlord an amendment to include a monetary order for unpaid rent and dismiss the landlord's application to retain the security deposit and recover the filing fee.

Issue(s) to be Decided

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

Background and Evidence

As per the submitted tenancy agreement and testimony of the landlord, the tenancy began on April 1, 2016 on a fixed term until March 31, 2017. Rent in the amount of \$2,700.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$1,250.00 at the start of the tenancy. Although the tenant vacated the rental unit on August 1, 2016, additional occupants remain in the rental unit.

On August 7, 2016 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") to an adult that lived with the tenant. The notice indicates an effective move-out-date of August 18, 2016. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was served with the landlord's 10 Day Notice on August 7, 2016.

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 within five days, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. The tenant, and any other occupant or other person occupying the premises must move out of the

unit. As other occupants remain in the rental unit, I find that the landlord is entitled to a two (2) day order of possession, pursuant to section 55 of the *Act*.

Conclusion

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: October 13, 2016

Residential Tenancy Branch