



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction and Preliminary Matters

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein the Landlord requested an Order of Possession and Monetary Order based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on August 3, 2016 (the "10 Day Notice").

These proceedings commenced on August 9, 2016 when the Landlord applied for this relief by way of the Direct Request Proceeding pursuant to section 55(4) of the *Residential Tenancy Act*. By Decision made August 18, 2016 the Landlord was granted the relief sought.

The Tenants applied for Review Consideration pursuant to section 79(2) of the *Residential Tenancy Act* on August 23, 2016. By Decision dated September 1, 2016, the Decision and Orders granted on August 18, 2016 were suspended pending a Review Hearing.

The Review Hearing was set before me on October 31, 2016. At that time, only the Landlord appeared at the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Tenants, as the party requesting Review Consideration, were provided with the Decision and the Notice of Review Hearing for their own information as well as for service on the Landlord.

The Landlord testified that the Tenants failed to serve him with Notice of the Review Hearing, or the Review Consideration Decision as Ordered by the Arbitrator granting the Tenants Review Consideration. He stated that he only became aware of the hearing when he called the residential tenancy branch on his own volition.

The Landlord also testified that despite applying for Review Consideration on August 23, 2016, the Tenants vacated the rental unit at some point prior to September 1, 2016. He further stated that although the Tenants have given up possession of the rental unit, he requires an Order of Possession.

The Landlord also confirmed that he no longer sought a Monetary Order as the Tenants paid the outstanding rent. An Amendment to an Application for Dispute Resolution was filed by the Landlord on August 12, 2016 confirming this payment and the Landlord's request to withdraw this request for monetary compensation.

Issue to be Decided

Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Landlord testified that the tenancy began on November 1, 2013. Monthly rent was initially \$1,800.00 and rose to \$1,850.00.

The Landlord testified that the Tenants failed to pay rent for August 2016 in the amount of \$1,850.00. In response, the Landlord issued the 10 Day Notice.

The Landlord testified that he witnessed a third party, J.H., personally serve the Tenants on August 3, 2016. Introduced in evidence was a copy of the Proof of Service confirming same.

The Landlord testified that the Tenants also applied for Dispute Resolution. He stated that the Tenants failed to attend the hearing of their application. A review of the branch records confirms that the Tenants applied for Dispute Resolution on July 28, 2016 seeking to cancel a Notice to End Tenancy for Cause. Further, it appears as though a hearing was scheduled, but cancelled by the Tenants on September 9, 2016.

The Landlord stated that it was his belief that the Tenants simply used their application for Review Consideration as a delay tactic, and to create an opportunity to damage the rental unit. He stated that prior to issuing the 10 Day Notice he had inspected the rental unit and confirmed its condition to be satisfactory. He stated that when he then saw the rental unit after the Tenants vacated the rental unit, it was significantly damaged. It was his belief that the Tenants allowed numerous dogs to urinate and otherwise damage the interior to such an extent that he believes the damage to be in excess of \$20,000.00.

Analysis

As noted earlier in this my Decision, the Landlord applied for and was granted an Order of Possession by way of Direct Request proceeding. The Decision and Order were suspended pending this Review Hearing as the Arbitrator considering the Tenants request for Review Consideration was unable to determine the date of service of the 10 Day Notice based on the Tenants' conflicting submissions on their application.

Based on the evidence before me, the undisputed testimony of the Landlord and on a balance of probabilities, I find that the Tenants were served with the 10 Day Notice on August 3, 2016. I

accept the Landlord's testimony that he witnessed J.H. personally serving the Tenants with the 10 Day Notice on August 3, 2016. As such, I find that the Tenants had until August 8, 2016 to pay the outstanding rent, or apply to dispute the Notice.

The Landlord testified that the Tenants paid the outstanding rent on August 9, 2016. This is outside the five days permitted by section 46 of the *Residential Tenancy Act*. Accordingly, pursuant to section 46(5) the Tenants are conclusively presumed to accept the end of the tenancy.

Pursuant to section 55 of the *Residential Tenancy Act*, I find that the Landlord is entitled to the Order of Possession awarded to him on August 18, 2016. **Therefore, the Decision and Order made on August 18, 2016 are affirmed.**

As the Landlord withdrew his monetary claim by way of his Amendment filed on September 12, 2016, I am unable to consider any request for compensation for damage. The Landlord is at liberty to apply for such relief.

Conclusion

The Tenants failed to pay the outstanding rent within five days of service of the 10 Day Notice. The Landlord is entitled to an Order of Possession pursuant to sections 46 and 55 of the *Residential Tenancy Act*. The Decision and Order made on August 18, 2016 are affirmed.

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 31, 2016

Residential Tenancy Branch