



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR

Preliminary Issues

The Landlord testified that she had named the Tenant and the Tenant's mother as respondents to this dispute because they were both living in the rental unit. She asserted that the Tenant was known by two different first names, the name listed on the tenancy agreement; and the name she listed for him on her application for Direct Request. The tenancy agreement submitted into evidence listed the male Tenant, who signed that agreement, and did not list any other tenants.

An occupant is defined in Residential Tenancy Policy Guideline 13 where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the original tenancy agreement, unless all parties (owner/agent/landlord(s), tenant(s), and occupant) agree to enter into a written tenancy agreement to include the new occupant(s) as a tenant. I concur with this policy and find it is relevant to the matters before me.

In the absence of a written tenancy agreement listing the Tenant's mother, I concluded the Tenant's mother was an occupant and not a tenant, pursuant to Policy Guideline 13. Furthermore, I accepted the Landlord's undisputed submissions that the Tenant was known by two different first names. As such, the style of cause has been amended to remove the Tenant's mother's name and include both names the Tenant was known by, pursuant to section 64(3)(c) of the Act.

Introduction

The Landlord originally filed an Application for Direct Request, an ex parte proceeding, seeking an Order of Possession for unpaid rent and a Monetary Order for unpaid rent. The Direct Request proceeding resulted in an Interim Decision being issued on October 6, 2016, sending this matter to a participatory hearing.

The participatory hearing was conducted on November 9, 2016, via teleconference. That hearing was attended by the Landlord and her Agent. No one was in attendance on behalf of the named respondents.

The Landlord provided affirmed testimony that since she served the 10 Day Notice the Tenant's behavior has become more aggressive and he refuses to open his door. The Tenant has also refused the Landlord access to the unit after 24 hour notice had been

posted to his door. As a result, the Landlord said she personally served the Tenant, C. F., with copies of her application for Direct Request and evidence on September 19, 2016 in the presence of a police officer.

The Landlord submitted that given the Tenant's recent behavior the only way she could serve him with the Interim Decision and Notice of the teleconference hearing was by posting it to the Tenant's door on October 10, 2016. The Landlord stated that she kept checking the Tenant's door and noticed that the package had been removed approximately one hour after she posted it.

The Residential Tenancy Branch (RTB) record indicates both the Landlord and the Tenant were sent a copy of the October 6, 2016 Interim Decision via Canada Post on October 7, 2016.

Section 89(1) of the *Act* stipulates that an application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to a landlord, must be given in one of the following ways: (a) by leaving a copy with the person;(b) if the person is a landlord, by leaving a copy with an agent of the landlord;(c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord.

Section 71(2)(c) of the *Act* provides that the director may make an order that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of this Act.

After careful consideration of the evidence before me, I ordered that the Tenant was sufficiently served notice of this application and teleconference proceeding, pursuant to section 71(2)(c) of the *Act*. As such I continued to hear the undisputed evidence of the Landlord in absence of the Tenant.

Issue(s) to be Decided

Has the Landlord proven entitlement to an Order of Possession and Monetary Order for unpaid rent?

Background and Evidence

The Tenant entered into a fixed term tenancy agreement which began on March 30, 2016 and was not scheduled to end until March 30, 2017. Rent of \$1,250.00 was payable on or before the first of each month. In March 2016 the Tenant paid \$625.00 as a security deposit.

The tenancy agreement states: "-65\$ criminal record background". The Landlord submitted that she had requested that the Tenant obtain a criminal record check report

and if he provided the Landlord a copy of that report the Landlord would reimburse the Tenant the \$65.00 fee required to obtain the report. The Landlord testified she wrote that on the tenancy agreement for the Tenant's benefit. However, the Tenant never provided her with a copy of a criminal record check report so she did not reimburse that money to him.

The Landlord submitted that when the Tenant failed to pay his September 1, 2016 she posted a 10 Day Notice to his door; as submitted into evidence. The Landlord said the Tenant paid the September 2016 rent on September 28, 2016 after the 5 day period and he had not paid anything towards October or November 2016 rents. The Landlord now seeks an Order of Possession and a Monetary Order for the unpaid October and November 2016 rents in the amount of \$2,500.00 (2 x \$1,250.00).

Analysis

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*. After careful consideration of the foregoing undisputed evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant is deemed to have received the 10 Day Notice on September 9, 2016 and the effective date of the Notice would be automatically corrected to **September 19, 2016**. The Tenant did not dispute the Notice and failed to pay the rent in full by September 14, 2016. Rather, the Tenant paid the rent on September 28, 2016, nine days after he was served with notice of the Landlord's application for Direct Request, in the presence of a police officer. No rent has been paid for October or November 2016.

Based on the undisputed evidence before me I find the Tenant was conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **September 19, 2016**. Accordingly, I grant the Landlord's request for an Order of Possession.

The Landlord has been issued an Order of Possession effective **Two (2) Days after service upon the Tenant**. In the event that the Tenant does not comply with this Order it may be filed with the Supreme Court and enforced as an Order of that Court.

The Landlord claimed unpaid rent of \$1,250.00 for September 2016. That rent has since been paid in full. As such, I dismiss the request for unpaid September 2016 rent without leave to reapply.

As noted above this tenancy ended **September 19, 2016**, in accordance with the 10 Day Notice. Therefore, I find the Landlord's request for \$2,500.00 was for use and occupancy and/or for loss of rent for October and November 2016, not rent. The Tenant has continued to occupy the rental unit; therefore, it is reasonable to conclude the Tenant would be required to pay the Landlord for that occupation. The Landlord will not regain possession of the unit until after service of the Order of Possession. The Landlord will then need to ready the unit and advertise to find a new tenant. Accordingly, I grant the Landlord's request to amend their application and I award her **\$2,500.00** for use and occupancy and loss of rent for the months of October and November 2016.

Conclusion

The Landlord was successful with their application and was granted an Order of Possession and a \$2,500.00 Monetary Order.

This decision is final, legally binding, 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: November 9, 2016

Residential Tenancy Branch