



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 was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application.

The landlord attended the hearing and gave affirmed testimony, however the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenant attended the call. The landlord testified that the tenant was served with the Landlord's Application for Dispute Resolution and notice of this hearing by registered mail on September 21, 2016 and was given the opportunity to send to me by facsimile proof of such service after the hearing had concluded. I have now received a Canada Post cash register receipt bearing that date as well as a Registered Domestic Customer Receipt bearing a stamp from Canada Post, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

During the course of the hearing the landlord testified that he believes the tenant has moved out of the rental unit, and withdrew the application for a monetary order for unpaid rent or utilities and recovery of the filing fee, testifying that he would not be able to collect from the tenant and does not have a forwarding address for the tenant.

Issue(s) to be Decided

The issue remaining to be decided is:

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?

Background and Evidence

The landlord testified that this month-to-month tenancy began in January, 2016 and believes the tenant moved out around October 25, 2016, leaving the keys to the rental unit at the rental unit.

Rent in the amount of \$500.00 per month was payable on the 1st day of each month. The landlord did not collect a security deposit or a pet damage deposit from the tenant, and no written tenancy agreement was signed by the parties.

The tenant failed to pay rent on time throughout the tenancy, and on September 6, 2016 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by registered mail. Proof of such service has been provided as well as a copy of the notice sent. It is dated September 6, 2016 and contains an effective date of vacancy of September 19, 2016 for unpaid rent in the amount of \$500.00 that was due on August 1, 2016. The tenant paid August's rent on September 23, 2016, for which the landlord gave the tenant a receipt that specified that the money was being accepted for use and occupancy only and did not serve to reinstate the tenancy. The tenant has not paid any rent since, and owes the landlord \$500.00 for September and \$500.00 for October.

The rental unit has not been advertised for rent, and the landlord seeks an Order of Possession to be sure that the landlord can legally enter the rental unit since the tenant did not give the landlord any notice and did not return the keys to the landlord that give access to the rental unit.

The tenant has not served the landlord with an Application for Dispute Resolution disputing the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

Analysis

The *Residential Tenancy Act* states that once a tenant has been served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent in full or dispute the notice. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy. In this case, the tenant paid the rent for August, but not within 5 days. The landlord testified that the tenant has not served the landlord with an application for dispute resolution disputing the notice, and I have no such application before me. Therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy. Since the tenant appears to have moved out and the effective date of vacancy has passed, I grant an immediate Order of Possession in favour of the landlord.

Conclusion

For the reasons set out above, the landlord's application for a monetary order for unpaid rent or utilities is hereby dismissed as withdrawn.

I hereby grant an Order of Possession in favour of the landlord effective immediately.

This order is final and binding and may be enforced.

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: November 10, 2016

Residential Tenancy Branch