



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 scheduled to deal with a landlord's application for an Order of Possession and Monetary Order for unpaid rent and utilities. The tenant did not appear at the hearing.

The landlord testified that on December 9, 2016 he served the hearing package upon the tenant's adult son who resides in the rental unit with the tenant (the son's name is provided on the cover page of this decision). The tenant's son signed a document acknowledging receipt of the hearing package and evidence from the landlord.

An Application for Dispute Resolution and other required documents are to be served upon the respondent in a manner that complies with section 89 of the Act. Serving the documentation to an adult person who apparently resides with the tenant is an acceptable method of service for purposes of seeking an Order of Possession, as provided under subsection 89(2). However, an application for a monetary order must be served upon the respondent either: in person or by registered mail, unless the applicant has authorization from the Director to serve in another way, as provided under subsection 89(1).

In light of the above, I was satisfied the landlord sufficiently served the tenant with respect to seeking an Order of Possession and I continued to hear from the landlord without the tenant present in order to determine the landlord's entitlement to an Order of Possession. However, I dismissed the landlord's monetary claim against the tenant with leave to reapply as service was not sufficient for purposes of seeking a Monetary Order. The landlord remains at liberty to file another application if he so chooses to pursue the tenant for a Monetary Order.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

The parties entered into an oral tenancy agreement for a tenancy set to start on September 24, 2016. The tenant paid a security deposit and a pet damage deposit totalling \$1,500.00. The tenant was required to pay pro-rated rent for the month of September 2016 and rent of \$1,500.00 starting on October 1, 2016 and every month thereafter. The tenant was also required to pay the landlord for 60% of the utilities.

The landlord testified that the tenant was late in making the rent payments for September 2016, October 2016 and November 2016. On December 2, 2016 the landlord received a payment of \$840.00 from the tenant and then served her with a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice). The landlord testified that he served the tenant in person with both pages of the 10 Day Notice in the presence of a witness.

The 10 Day Notice indicates rent of \$660.00 was outstanding as of December 1, 2016 and utilities of \$40.60 were outstanding as of December 1, 2016. The 10 Day Notice has an effective date of December 12, 2016.

The landlord testified that after serving the tenant with the 10 Day Notice the tenant did not pay the outstanding rent or utilities. Nor did she pay any rent for January 2017 and she continues to occupy the rental unit. The landlord seeks an Order of Possession as soon as possible.

As documentary evidence for this proceeding, the landlord provided copies of: the 10 Day Notice; a Fortis natural gas bill dated November 25, 2016; a signed Proof of Service for the 10 Day Notice; numerous text messages exchanged between the parties; and, the signed Proof of Service for the hearing package.

Analysis

Under section 26 of the Act a tenant is required to pay rent when due in accordance with their tenancy agreement. Under section 1 of the Act, a tenancy agreement includes agreements entered into orally. I accept the undisputed evidence before me that the tenant was required to pay rent of \$1,500.00 on the first day of every month and was required to pay the landlord 60% of utilities.

Where a tenant does not pay rent the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant

has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the 10 Day Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the 10 Day Notice.

I accept the unopposed evidence before me that the landlord personally served the tenant with a 10 Day Notice on December 2, 2016 because she failed to pay all of the rent that was due and the tenant did not pay the outstanding rent or dispute the 10 Day Notice within five days. Accordingly, I find the tenant is conclusively presumed to have accepted that the tenancy would end on the effective date of December 12, 2016. Since the tenant continues to occupy the rental unit, I find the landlord is entitled to an Order of Possession.

With this decision I provide the landlord an Order of Possession that is effective two (2) (2) days after service.

I award the landlord recovery of the \$100.00 filing fee paid for this application. I authorize the landlord to deduct \$100.00 from the tenant's security deposit in satisfaction of this award.

Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service.

The landlord has been authorized to deduct \$100.00 from the tenant's security deposit in order to recover the filling fee paid for this application from 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: January 04, 2017

Residential Tenancy Branch