



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MNSD O FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlord on December 28, 2016. The Landlord filed seeking an Order of Possession for unpaid rent or utilities and a Monetary Order for unpaid rent or utilities; to keep all or part of the security and/or pet deposit; for other reasons; and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by the Landlord who gave affirmed testimony. I heard the Landlord state that they served the Tenant with copies of their application for Dispute Resolution and Notice of Hearing documents by posting them to the Tenant's door on December 29, 2016 at 11:00 a.m. in the presence of a witness. That service information was documented on a Proof of Service Form submitted into evidence.

The *Residential Tenancy Act* (the *Act*) stipulates various service methods for special documents which includes applications for Dispute Resolution. If the application is for an Order of Possession and a Monetary Order section 89(1) of the *Act* stipulates the application **must** be served 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; or (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.

If an application for Dispute Resolution is for only an Order of Possession section 89(2) of the *Act* stipulates the application **must** be given to the tenant in one of the following ways: (a) by leaving a copy with the tenant; (b) by sending a copy by registered mail to the address at which the tenant resides; (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant; (d) **by attaching a copy to a door or other conspicuous place at the address at which the tenant resides**; or (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

As per the above, I find this application was sufficiently served upon the Tenant for the purposes of the Landlord's request for an Order of Possession for unpaid rent and was not sufficiently served for the purpose of seeking a Monetary Order.

When a document is served by posting it to the door, section 90(a) of the *Residential Tenancy Act* (the "*Act*") states the document is deemed to have been received three days after it is posted to the door. Therefore, I find the Tenant was deemed to have received the Landlord's application for Dispute Resolution and Notice of Hearing documents on January 1, 2017, the third day after they were posted to his door. As such I continued to hear the matters relating to the request for an Order of Possession and dismissed the requests for a Monetary Order for unpaid rent or utilities; to keep all or part of the security and/or pet deposit; for other reasons, with leave to reapply.

Issue(s) to be Decided

Has the Landlord proven entitlement to an Order of Possession?

Background and Evidence

The parties entered into a written fixed term tenancy agreement which commenced on May 1, 2013 and switched to a month to month tenancy after April 30, 2014. Rent of \$740.00 was payable on the first of each month and on April 9, 2013 the Tenant paid \$370.00 as the security deposit.

The Landlord submitted evidence that the Tenant's July 2016 and August 2016 rent payments were returned due to insufficient funds (NSF). The Landlord received a cash payment of \$450.00 on August 30, 2016 and a \$400.00 cheque on September 7, 2016. That \$400.00 cheque was subsequently returned NSF. No payments have been received from the Tenant for rent since the September 7, 2016 cheque.

On November 29, 2016 the Landlord served the Tenant a 10 Day Notice to end tenancy for \$2,605.00 unpaid when it was posted to the Tenant's door. The Notice was signed on November 29, 2016 listing an effective date of December 9, 2016. The Landlord stated he checked on the unit on January 21, 2014 and the Tenant was still occupying the unit. The Landlord now seeks an Order of Possession effective as soon as possible.

Analysis

Given the evidence before me, in the absence of any evidence from the Tenant who did not appear despite being served with notice of this proceeding, I accept the undisputed version of events as discussed by the Landlord and corroborated by their evidence.

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.

Section 90(a) of the *Residential Tenancy Act* (the "Act") states that a document served by posting it to the person's door is deemed to have been received three days after it is posted.

Subsection (2) of Section 53 states that if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

In this case the Tenant was deemed to have received the 10 Day Notice on December 2, 2016, three days after it was posted to the door, pursuant to section 90 of the *Act*. Therefore, the effective date of the Notice automatically corrects to December 12, 2016, pursuant to section 53(2) of the *Act*.

Section 55(2)(b) of the *Act* provides that a landlord may request an order of possession of a rental unit if a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

The Tenant neither paid the rent nor disputed the Notice; therefore, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **December 12, 2016**, pursuant to section 46 of the *Act*.

As per the foregoing, I grant the Landlord's request and issue them an **Order of Possession effective 2 Days upon service** to the Tenant, pursuant to section 55(2)(b) of the *Act*. In the event that the Tenant does not comply with this Order it may be enforced through Supreme Court.

Section 72(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has partially succeeded with their application; therefore, I award recovery of the **\$100.00** filing fee, pursuant to section 72(1) of the *Act*.

The parties are reminded of the provisions of section 72(2)(b) of the *Act*, which authorizes a landlord to deduct any amount the director orders a tenant to pay to a landlord, from the security deposit, which in these circumstances is \$100.00.

Conclusion

The Landlord was partially successful with their application and was awarded an Order of Possession and the \$100.00 filing fee which is to be withheld from the security deposit. The Landlord's request for a Monetary Order was dismissed with leave to reapply.

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: January 24, 2017

Residential Tenancy Branch