



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

On February 14, 2017, the Landlord submitted an Application for Dispute Resolution for an order of possession; for a monetary order for unpaid rent or utilities; to keep the security deposit; and to recover the cost of the filing fee. The matter was set for a conference call hearing.

The Landlord attended the teleconference hearing; however, the Tenant did not. The Landlord provided affirmed testimony that the Tenant was served with the Notice of Hearing by posting it to the Tenants door on February 14, 2017. The Landlord testified that she knows the Tenant received the Notice because she observed the Tenant with the Notice. I find that the Tenant has been duly served with the Notice of Hearing in accordance with the Act.

The Landlord was provided the opportunity to present her evidence orally and in written and documentary form, and to make submissions at the hearing.

Preliminary and Procedural Matters

Section 89 of the Act sets out the rules of service for certain documents. Section 89 (2) of the Act permits an Application for an order of possession to be served by attaching a copy to a door at which a tenant resides. An Application for dispute resolution under section 89 (1) of the Act does not permit service of the Notice of Hearing by attaching a copy to a door.

The Landlord provided affirmed testimony that the Notice of Hearing was posted to the Tenant's door.

I find that I can proceed with the Landlord's request for an order of possession; however; the request to recover the unpaid rent and security deposit is dismissed with leave to reapply.

Issues to be Decided

- Is the Landlord entitled to an order of possession due to unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord testified that the tenancy began on July 1, 2016, on a month to month basis. Rent in the amount of \$550.00 is to be paid on the first day of each month. The Tenant paid the Landlord a security deposit of \$250.00.

The Landlord testified that the Tenant did not pay any rent for the month of February 2017.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 2, 2017, ("the Notice").

The Landlord testified that the Tenant was served with the Notice on February 2, 2017, by attaching a copy of the Notice to the Tenant's door. The Landlord provided a witness statement confirming service of the Notice.

The Notice states that the Tenant has failed to pay rent in the amount of \$550.00 which was due on February 1, 2017. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

There is no evidence before me that that the Tenant made an application to dispute the Notice.

The Landlord testified that the Tenant failed to pay the rent owing within five days of receiving the Notice. The Landlord testified that the Tenant has not paid any money towards rent since the Notice was issued.

The Landlord seeks an order of possession.

Analysis

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the Tenant has not paid the outstanding rent within five days of receiving the Notice, and did not apply to dispute the Notice, and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective two days after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

Conclusion

The Tenant failed to pay the rent and did not file to dispute the Notice. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice.

The Landlord is granted an order of possession effective 2 days after service on the Tenant and I grant a monetary order for the cost of the filing fee in the amount of \$100.00.

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: March 13, 2017

Residential Tenancy Branch