



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SOCIETY OF HOUSING OPPORTUNITIES AND PROGRESSIVE
EMPLOYMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; and to recover the filing fee from the tenant for the cost of this application.

At the outset of the hearing the landlord withdrew their application for a Monetary Order for unpaid rent and to recover the filing fee from the tenant.

The tenant and landlord's agents (the landlord) attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions under oath. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

The parties agreed that this month to month tenancy started on October 01, 2009. Market rent for this unit is \$960.00 per month although the tenant pays a subsidized rent of \$321.00. Rent is due on the 1st of each month.

MC testified that on February 01, 2017 the tenant paid a portion of her rent of \$220.00 which left an outstanding balance of \$101.00. A 10 Day Notice to End Tenancy for unpaid rent (the Notice) was posted to the tenant's door on February 03, 2017. The landlord has provided a copy of the Notice in documentary evidence. The Notice has an effective date of February 13, 2017 and advised the tenant that she has five days to either pay the outstanding rent or file an application to dispute the Notice.

WP testified that the tenant did not approach the landlord until February 22, 2017 to pay the rent plus rent for March, 2017. WP declined to accept this as it was offered outside the five day time frame and the landlord did not want to reinstate the tenancy. The landlord seeks an Order of Possession for the end of March, 2017. WP testified that there is also a late fee of \$20.00 to be paid for February, 2017 as agreed under the terms of the tenancy agreement.

The tenant testified that she never received the Notice on her door or by any other means. She was not aware of the Notice until she received the landlord's hearing package. The tenant agreed she only paid \$220.00 on February 01, 2017 but testified that she had spoken to MC on the phone on January 31, 2017 about another matter and informed MC that her February rent would be short and MC said that would be fine. The tenant testified that she went to the landlord's office on February 22, 2017 to pay the outstanding rent and rent for March but WP was rude to her and refused to take the rent.

MC testified that in regards to the phone call she made to the tenant on January 31, 2017 this was to do with unapproved storage and a letter MC had posted to the tenant's

door concerning that storage. The tenant said she never got that letter either but there was no mention of any late rent during that conversation.

The tenant testified that she would never risk losing her and her children's home over the non-payment of \$100.00. The tenant testified that she can pay the rent arrears, rent for March and the late fee of February today.

Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

I have considered both parties testimony concerning the service of the 10 Day Notice upon the tenant's door. In this matter the landlord has the burden of proof to show that service took place as stated. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. In the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that the 10 Day Notice was served upon the tenant pursuant to s. 88(g) of the *Act*, or by any other method of service under s. 88 of the *Act*.

The reason this proof of service is important is because the tenant has five days after being deemed served the Notice to either pay the outstanding rent or to file an application to dispute the Notice. If the tenant was not served the Notice then this would prejudice her right to pay the rent or dispute the Notice. While the parties agree that there is \$101.00 in outstanding rent I cannot uphold the Notice without proof it has been served in accordance to s.88 of the *Act*.

Consequently the landlord's application for an Order of Possession is dismissed. The landlord is at liberty to serve a new 10 Day Notice to End Tenancy if the tenant fails to pay the outstanding rent for February, 2017 and rent for March, 2017.

Conclusion

The landlord's application is dismissed.

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 17, 2017

Residential Tenancy Branch