



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, LRE, RR, OPR, MNR, MNSD, FF

Introduction

This hearing was scheduled for 11:00 a.m. on this date, via teleconference call, to deal with cross applications. The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; for orders for compliance; to set conditions or suspend the landlord's restricted right to enter the rental unit; and, authorization to reduce rent payable. The landlord applied for an Order of Possession for unpaid rent; a Monetary Order for unpaid rent; and, authorization to retain all or part of the tenant's security deposit.

The landlord appeared at the hearing; however, there was no appearance on part of the tenant despite leaving the teleconference call open for more than 15 minutes.

The landlord acknowledged that he was served with the Tenant's Application for Dispute Resolution. Since the tenant failed to appear at the hearing, I dismissed the tenant's application without leave to reapply.

As for service of the landlord's Application for Dispute Resolution, the landlord stated that it was served to the other tenant residing at the rental unit (referred to by initials RM in this decision) shortly after filing. I noted that the landlord had not named RM on his Application for Dispute Resolution; rather, he had named only the tenant who filed the Tenant's Application for Dispute Resolution (referred to by initials MH). The landlord stated that there are two co-tenants under the tenancy agreement, MH and RM. I confirmed that two co-tenants are named on the 10 Day Notice before me. Nevertheless, the landlord only named MH on his Application for Dispute Resolution. Since the only tenant named on both Applications for Dispute Resolution before me is MH, this decision names MH only.

Where a landlord seeks an Order of Possession, the landlord may serve the landlord's Application for Dispute Resolution upon the tenant or an adult person who resides with the tenant at the rental unit, pursuant to section 89(2) of the Act. Accordingly, I found the landlord sufficiently served his Application for Dispute Resolution with respect to seeking an Order of Possession. However, a monetary claim must be served upon the

tenant named either in person or by registered mail, as provided under section 89(1) of the Act, and I find the landlord did not serve MH in accordance with section 89(1).

Therefore, I did not further consider the landlord's request for a Monetary Order and the landlord's monetary claim is dismissed with leave to reapply.

In light of the above, I proceeded to consider whether the landlord is entitled to an Order of Possession.

Issue(s) to be Decided

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

Background and Evidence

The landlord testified that he served a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") in person to MH on September 4, 2017. This is consistent with the information the tenant provided on the tenant's Application for Dispute Resolution.

The 10 Day Notice indicates rent of \$2,375.00 was outstanding as of September 1, 2017. The landlord submitted that this sum includes unpaid rent for the months of July 2017, August 2017 and September 2017.

The landlord testified that the tenants did not pay the outstanding rent within five days of receiving the 10 Day Notice. The landlord testified that on October 22, 2017 he received \$2,000.00 from the tenants with promises to catch up on the arrears; however, no other monies have been received from the tenants and they continue to occupy the rental unit.

Analysis

Section 55 of the Act provides for the circumstances where a landlord may seek and obtain an Order of Possession. Section 55 provides, in part:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

(a) a notice to end the tenancy has been given by the tenant;

(b) 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;

(c) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit at the end of the fixed term;

(d) the landlord and tenant have agreed in writing that the tenancy is ended.

In this case, the tenant provided a copy of both pages of the 10 Day Notice served upon her. It appears to be duly completed and it is in the approved form. The tenant filed to dispute the 10 Day Notice and I dismissed the tenant's application as explained previously in this decision. Accordingly, I find the criteria of section 55(1) have been met and I provide the landlord with an Order of Possession. The landlord is provided an Order of Possession to serve and enforce upon the tenant effective two days after service. The permissible methods of service for the Order of Possession are as provided under section 88 of the Act.

Since the tenant had filed to dispute the 10 Day Notice, the landlord's application for an Order of Possession was unnecessary as provided under section 55(2) of the Act. Further, the landlord's monetary claim did not proceed since he did not serve the tenant he named on this Application for Dispute Resolution. Therefore, I make no award to the landlord for recovery of the filing fee. I acknowledge that during the hearing I provided my preliminary findings, including an award of recovery of the filing fee. This final decision replaces my preliminary oral findings.

Conclusion

The tenant's application was dismissed and the landlord has been provided an Order of possession under section 55(1) of the Act, to be effective two days after service.

The landlord's monetary claim is dismissed with leave to reapply.

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: December 06, 2017

Residential Tenancy Branch