



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR MNSD FF

Introduction:

Both parties and the landlord's agent attended the hearing and gave sworn testimony. The tenant agreed she received the 10 Day Notice to end Tenancy dated November 3, 2017 to be effective November 18, 2017 by registered mail one week later. It was verified on the postal website as received on November 9, 2017. She said she never received the Application for Dispute Resolution as she has been having trouble with her mail. The landlord testified they sent the application documents twice by registered mail. It was verified online that the postal service noted the tenant was not located at the address provided for the first package and for the second service, that a Notice card was left December 20, 2017 indicating it was available for pickup but it was never picked up. The landlord said he had sent the application and documents to the same address each time and finds it strange that the tenant says she receives some and not others. A final Notice was left on January 3, 2018 that it would be returned to the sender if not picked up within 10 days. The tenant said that by the time she called the Post Office, it had already been returned to the sender. She said she has had trouble with her mail and the post office is investigating. I find that the tenant was legally served with the Notice to End Tenancy according to sections 88 and 89 of the Act and is deemed to be served with the Application for Dispute Resolution five days after the mailing on December 16, 2017. I find the landlord's evidence concerning service credible as it was given in a straightforward manner with supporting documentation. I prefer it to the evidence of the tenant who was evasive in why she did not dispute the Notice and blamed advice from the tenancy branch. She provided no documentation to support this or her allegations of problems with mail delivery. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 46 and 67;
- b) An Order of Possession pursuant to Sections 46, and 55;
- c) To retain the security deposit to offset the amount owing; and
- d) To recover filing fees for this application.

Issue(s) to be Decided:

Is the landlord entitled to an Order of Possession and to a Monetary Order for rental arrears and filing fee?

Background and Evidence:

Both parties and an agent attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced June 1, 2012, a security deposit of \$600 was paid and rent is currently \$1280 a month. It is undisputed that the tenant owes \$6400 rent for the months September 2017 to January 2018. The tenant said she has had financial hardship and there are no other units available. She has applied for assistance and would like to stay. The landlord is claiming the rental arrears and over holding rent totalling \$6400 but said she is willing to waive January 2018 total rent and claim only a prorated 9 days for January 2018 as she needs an Order of Possession as soon as possible. She explained that she has financial hardship herself as she has returned to school and the tenant has been paying no rent for 5 months.

The tenant did not dispute the amount owing but tried to have the application dismissed as she said she did not get served with a copy of the Application and wanted to put in evidence. When I queried why she did not dispute the 10 Day Notice, she said she called the tenancy branch and was told she was out of time.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Order of Possession

I find that the landlord is entitled to an Order of Possession. There is outstanding rent. The Tenant has not made application pursuant to Section 46 to set aside the Notice to End a Residential Tenancy and the time to do so has expired. I find she received the 10 Day Notice to End Tenancy by registered mail on November 9, 2017. Whether or not she received advice from the tenancy branch, I find it clearly states in the Notice that she has 5 days to file a dispute to the Notice or pay her rent. I find she did neither. In these situations, the Residential Tenancy Act provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. I find the tenancy ended on November 19, 2017 (10 days after receipt of the Notice). An Order of Possession is issued effective two days from service.

In respect to the tenant's contention that she did not get an opportunity to submit evidence, I find she is deemed to have received the Application for Dispute Resolution five days after the service by registered mail on December 20, 2017. I find she testified that she also contacted the tenancy branch concerning the application. She was also given an opportunity in the hearing to submit evidence. I find she had no evidence that she had paid the rent which I find is most relevant to the 10 Day Notice to End Tenancy. Although she states her financial circumstances are very difficult, I find section 26 of the Act requires a tenant to pay rent when due.

Monetary Order

I find that there are rental arrears and over holding rent in the amount of \$\$5120 to December 31, 2017 and \$371.61 prorated to January 9, 2018 ($1280/31 \times 9$).

Conclusion:

I find the landlord is entitled to an Order of Possession effective two days from service and a monetary order as calculated below. I find the landlord is entitled to retain the security deposit to offset the rental amount owing and to recover filing fees paid for this application.

Calculation of Monetary Award:

Rent arrears and over holding rent to Jan. 9, 2018	5491.61
Filing fee	100.00
Less security deposit	-600.00
Total Monetary Order to Landlord	4991.61

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 09, 2018

Residential Tenancy Branch