



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR FF

Introduction:

Both parties attended the hearing and gave sworn testimony. The tenant also had an advocate present. The landlord stated the 10 Day Notice to end Tenancy dated December 2, 2017 to be effective December 12, 2017 was served personally on December 2 at 7:30 p.m. and he provided a signed witness statement. The tenant denied this and said it was posted on his door and he paid the outstanding rent on December 8, 2017. The landlord said he served the Application for Dispute Resolution first on the door on December 14, 2017 and then personally on December 18, 2017. I find that the tenant was legally served with the documents according to sections 88 and 89 of the Act. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Section 67;
- b) An Order of Possession pursuant to Sections 46, and 55;
- c) To recover the filing fee for this application.

Preliminary Issue: Method and Time of Service of 10 Day Notice

The advocate for the tenant said she had submitted evidence for him regarding service. The evidence was not in the file and I queried the office and with held my decision until I receive and consider it. An effort was made to settle the matter but the landlord refused the terms suggested by the advocate as he said the tenancy had been troublesome. I received the 13 pages sent by the advocate. The fax showed it had been originally sent on December 22, 2017 so I find it was submitted in time to be considered. It consisted of a submission, an affidavit, a receipt for rent dated December 8, 2017 noted "for use and occupancy only" and the results of the Direct Request Proceeding.

After considering all the evidence of both parties, I find in issue is the credibility of the parties and the relevance of the date of service. The tenant filed an affidavit and gave sworn testimony in the hearing today that the Notice to End Tenancy dated December 2, 2017 was served by the landlord posting it on his door and he received it December 3, 2017. The landlord gave sworn testimony and filed a Proof of Service form signed by a witness saying she saw the Notice hand delivered to the tenant on December 2, 2017. Both parties agree the tenant paid the outstanding rent and utilities on December 8, 2017 and was issued a receipt "for use and occupancy only and not to reinstate the tenancy".

I find the landlord's evidence more credible that the notice was hand delivered on December 2, 2017. His evidence is supported by a witness who said she saw it delivered and the landlord's sworn testimony that it was hand delivered to the tenant at 7:32 p.m. that evening. While the tenant swore an Affidavit on December 8, 2017 and gave sworn testimony that the notice was posted on his door, I find he has no third party evidence to support his credibility. His advocate referred to section 25 (5) of the *Interpretation Act* in reference to counting the 5 days allowed to pay the rent after service of the Notice. I find section 25 (5) states that the "first day must be excluded and the last day included". If we exclude the first day (Dec. 2) and include the next 5 days (3,4,5,6,7), I find the tenant had until December 7, 2017 to pay his rent in order to cancel the Notice.

Section 46(4) states:

Within 5 days after receiving a notice under this section, the tenant may

(a) Pay the overdue rent, in which case the notice has no effect.

Therefore, as I find the Notice was served in person on December 2, 2017 and the tenant had 5 days, that is December 3, 4, 5, 6, and 7 to pay the rent and did not do it within that time, I find the Notice is effective.

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 attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced November 1, 2017, a security deposit of \$325 was paid and rent is currently \$650 a month plus 15% of utilities. The parties agreed and the lease stated the total owing per month was \$715. The landlord is claiming the rental/utility arrears of \$130 for December 2017 and January 2018. The tenant disputed the amount owing as he said he paid the utility bill for December as shown on the receipt in evidence. The landlord said the \$20 paid in December was applied to November utility cost. No rental ledger is in evidence. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Order of Possession:

Section 46(4) of the Act provides that when served with a 10 Day Notice to End Tenancy, the tenant may pay the rent within 5 days and the Notice is then of no effect. As discussed above, I find the rent was paid not paid within 5 days so the Notice is effective. While the landlord accepted rent after the five days, I find he clearly stated his acceptance was for "use and occupancy only and not to reinstate the tenancy". I find the tenancy was at an end on December 12, 2017. I find the landlord is entitled to an Order of Possession. Given the

circumstances of the case including the fact that the tenant has paid rent for December 2017 and January 2018, I use my discretion to issue the Order of Possession effective January 31, 2018.

Monetary Order

I find that there are some arrears. The lease in evidence states the monthly total of rent and other charges is \$715. The receipts in evidence show the tenant paid \$670 in December and \$650 in January 2018. Therefore, I find he owes \$45 arrears for December and \$65 for January. This is based on the provisions in the lease and oral evidence as the landlord did not provide an accounting ledger showing the tenant's payments and the application of them. I find the landlord entitled to a monetary order for \$110 and to recover his filing fee.

Conclusion:

I find the landlord entitled to an Order of Possession effective January 31, 2018 and a monetary order as calculated below.

Calculation of Monetary Award:

Arrears for December 2017 and January 2018	110.00
Filing fee	100.00
Total Monetary Order to Landlord	210.00

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: January 11, 2018

Residential Tenancy Branch