



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, AS, LAT, LRE, MNDCT; OPR, MNRL-S, MNDL-S, FFL

Introduction

This hearing addressed the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice"), pursuant to section 46;
- an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld pursuant to section 65;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67.

This hearing also addressed the landlord's cross application for:

- an order of possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent and for damage to the unit pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not participate in the conference call hearing to present his claim; consequently the tenant's entire application is dismissed without leave to reapply.

The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed he was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

The landlord testified that on August 29, 2018 he attached a copy of the landlord's application for dispute resolution hearing package to the tenant's door. The landlord testified that on this same date he also left a copy of the landlord's application in the tenant's mailbox. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application on September 5, 2018, three days after its posting.

Section 89 of the *Act* establishes that when a landlord serves an application for dispute resolution in relation to a monetary claim it must be served by leaving it directly with the tenant or by registered mail. As the landlord did not serve the tenant with a copy of the dispute resolution hearing package in accordance with section 89(1) of the *Act*, I dismiss the landlord's application to obtain a monetary order for unpaid rent and damages, with leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Background and Evidence

The landlord testified that this tenancy began on September 15, 2016 on a fixed term until December 15, 2016 at which time the tenancy continued on a month-to-month basis. Rent in the amount of \$425.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$212.50 at the start of the tenancy, which the landlord still retains in trust.

The landlord testified that the tenant was served with the landlord's 10 Day Notice, dated September 1, 2017, on August 16, 2018, by way of posting to the rental unit door where the tenant was residing. The landlord testified that the date of September 1, 2017 was a clerical error on his part. The landlord provided a signed, witness proof of service that the 10 Day Notice was served August 16, 2018. In accordance with

sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's 10 Day Notice on August 19, 2018, three days after its posting.

The 10 Day Notice for unpaid rent in the amount of \$850.00 due on July 1, 2018 indicates an effective move-out-date of August 28, 2018. The landlord claimed that the tenant has not paid any rent since the 10 Day Notice was issued.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent or utilities the tenant may, within five days, pay the overdue rent or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does not pay the overdue rent or file an application, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and must move out of the rental unit.

Section 52 of the *Act* provides that a notice to end tenancy from a landlord must be in writing and must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form. I accept the landlord's explanation that the date of September 1, 2017 was a clerical error, and that it should have been dated for August 16, 2018. I find that there was no prejudice to the tenant with this incorrect date, as the tenant received the notice and disputed it in his application. I also find that the incorrect date does not nullify the notice, as section 52 of the *Act* states only that the notice must be "dated."

Based on the landlord's testimony and the notice before me, I find that the tenant was served with an effective notice. As the tenant did not pay the overdue rent and his application has been dismissed, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must move out of the unit. Accordingly, I find that the landlord is entitled to a two (2) day order of possession, pursuant to section 55 of the *Act*.

As per section 55 of the *Act*, the director must grant the landlord an order of possession if the director dismisses the tenant's application or upholds the landlord's notice. Consequently, the landlord's application was not required and the landlord's application to recover the filing fee is dismissed.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

The landlord's application for a monetary order for unpaid rent and damage is dismissed with leave to reapply.

The landlord's application for an order of possession is granted effective two (2) days after service on the tenant.

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: October 12, 2018

Residential Tenancy Branch