



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession based on cause, a monetary order for unpaid rent and an order to recover the filing fee for the Application.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail, sent on October 29, 2011, the Tenant did not appear. Registered mail is deemed served five days after mailing under the Act, whether or not the Tenant accepts the registered mail. I find the Tenant has been duly served in accordance with the Act.

The Landlord appeared, gave affirmed testimony and was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified that the Tenant had paid the outstanding rent due prior to the date of the hearing, and therefore, the Landlord is no longer seeking a monetary order for unpaid rent.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession?

Background and Evidence

Based on the testimony and signed statement of the Landlord, I find that the Tenant was served with a one month Notice to End Tenancy for repeated late payment of rent on September 16, 2011, by leaving it in the mailbox for the rental unit. The delivery was witnessed by a third party who signed a statement as to witnessing this delivery.

The Notice informed the Tenant that the Tenant had 10 days to dispute the Notice, or the Tenant must move out on the effective date of the Notice. There is no evidence before me that the Tenant filed an Application to dispute the Notice.

In evidence the Landlord provided copies of five 10 day Notices to End Tenancy for unpaid rent which were served on the Tenant in June, July, August, October and November of 2011.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant did not apply to dispute the Notice and is therefore conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, that is, October 31, 2011. Furthermore, the Landlord has provided sufficient evidence to prove the Tenant has been late paying rent on three or more occasions in the recent past. I find the Tenant has been repeatedly late paying rent.

The Landlord testified that the Tenant paid his rent up to the end of November 2011, although it was late, and was satisfied with the order of possession being for the last day of November.

Therefore, I find that the Landlord is entitled to an order of possession effective **at 1:00 p.m. on November 30, 2011**. This order may be filed in the Supreme Court and enforced as an order of that Court.

I order that the Landlord may retain \$50.00 from the deposit held in order to recover the filing fee for the Application.

Conclusion

The Tenant has been repeatedly late paying rent and did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy. The Landlord is granted an Order of Possession and may keep \$50.00 from the security deposit for the filing fee for the Application.

This decision is final and binding on the parties, except as otherwise provided under the Act and 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: November 17, 2011.

Residential Tenancy Branch