



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, OPC

Introduction

This hearing dealt with a landlord's application for an Order of Possession based on a tenant's notice to end tenancy and a 1 Month Notice to End Tenancy for Cause. The tenant did not appear at the hearing. The landlord testified that the hearing documents were sent to the tenant at the rental unit via registered mail and successfully delivered on March 13, 2013. The landlord provided a registered mail tracking number as proof of service. I was satisfied the tenant has been sufficiently served with notice of this proceeding and I continued to hear from the landlord without the tenant present.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

The month-to-month tenancy commenced November 1, 2011 and the tenant paid a security deposit of \$362.50. Rent is payable on the 1st day of every month.

On November 14, 2012 the tenant gave the landlord written notice that he would be vacating the rental unit as of December 31, 2012 (the tenant's notice). The landlord also served a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) to the tenant, in person, on November 29, 2012 with a stated effective date of December 31, 2012. The tenant did not file to dispute the 1 Month Notice and did not vacate the rental unit.

The tenant indicated to the landlord that he needed more time to relocate and the landlord accepted rent "for use and occupancy only" for the months of January and February 2013. On February 12, 2013 the landlord issued a letter to the tenant indicating a move-out inspection would be scheduled for February 28, 2013; however, the rental unit was not vacated.

The landlord accepted rent “for use and occupancy only” for the month of March 2013 and filed this Application for Dispute Resolution seeking an Order of Possession. A rent cheque for the month of April 2013 was also received from the Ministry but not accepted by the landlord and the cheque was returned to the Ministry.

The landlord indicated that other unauthorized occupants have been residing in the rental unit. The landlord had changed the locks to the rental unit in March 2013 due to the unauthorized occupants residing in the unit; however, the tenant or an occupant kicked in the door to the rental unit and regained possession of the unit. I cautioned the landlord about illegal eviction which includes changing locks without first obtaining authorization to do so by the Director and/or a Writ of Possession.

As documentary evidence, the landlord provided copies of: the tenancy agreement; the tenant’s notice to end tenancy; the 1 Month Notice to End Tenancy for Cause; and, the landlord’s letter dated February 12, 2013.

Analysis

Section 44 of the Act provides for the various ways a tenancy ends. A tenancy may end pursuant to a tenant’s written notice to end tenancy given at least one month in advance. A tenancy may end pursuant to a Notice to End Tenancy issued by the landlord. In this case, I was presented evidence that both such notices were served upon each other and that both notices had the same effective date of December 31, 2012.

Upon review of the tenant’s notice I find it to be valid and enforceable. Therefore, I accept that the tenancy ended pursuant to the tenant’s notice.

Upon review of the landlord’s 1 Month Notice I find it to be in the approved form. I am also satisfied that the tenant did not file an Application for Dispute Resolution to dispute the 1 Month Notice and the tenant is, therefore, conclusively presumed to have accepted that the tenancy would end December 31, 2013 pursuant to section 47(5) of the Act. Accordingly, the tenancy also ended pursuant to the 1 Month Notice.

In the absence of evidence to the contrary, I am satisfied that the landlord accepted rent for “use and occupancy only” for the months of January through March 2013 and did not otherwise re-instate the tenancy. Therefore, I find the landlord entitled to regain possession of the rental unit and I provide the landlord an Order of Possession effective two (2) days after service upon the tenant.

I award the filing fee paid for this application to the landlord and I authorize the landlord to deduct \$50.00 from the tenant's security deposit in satisfaction of this award.

Conclusion

The landlord has been provided an order of Possession effective two (2) days after service upon the tenant. The landlord has been awarded the filing fee and has been authorized to deduct \$50.00 from the tenant's security deposit.

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: April 04, 2013

Residential Tenancy Branch