



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding POWELL HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPM, FFL

Introduction

This hearing was scheduled for 11:00 a.m. on today's date, via teleconference call, to deal with a landlord's application for an Order of Possession based on a mutual agreement to end tenancy. The landlord was represented by an agent; however, there was no appearance by the tenant despite leaving the teleconference call open at least 15 minutes.

Since the tenant did not appear, I explored service of the hearing documents upon the tenant. The landlord submitted a registered mail receipt, including tracking number, as proof the hearing documents were sent to the tenant on March 14, 2019. The landlord's agent testified that the tenant is still occupying the rental unit but did not pick up the registered mail and the hearing package was returned to the landlord.

Section 90 of the Act deems a person to be in receipt of documents mailed to them five days after mailing, even if the recipient refuses to accept or pick up their mail. Pursuant to section 90 of the Act, I deemed the tenant served with the hearing package and I continued to hear from the landlord's agent 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 started on November 1, 2018. The landlord collected a security deposit of \$312.50 and the tenant was obligated to pay rent of \$625.00 on the first day of every month.

On January 5, 2019 the landlord's agent and the tenant signed a *Mutual Agreement to a End Tenancy* with an effective date of February 28, 2019.

The tenant did not vacate the rental unit by February 28, 2019 and continues to occupy the rental unit. The tenant presented the landlord's agent with \$300.00 in cash on March 5, 2019 which the landlord accepted toward use and occupancy of the rental unit for the month of March 2019. No further monies have been paid by the tenant since March 5, 2019.

The landlord requests an Order of possession effective as soon as possible.

The landlord requests authorization to recover the filing fee from the tenant by deducting the fee from the tenant's security deposit.

Documentary evidence provided for consideration included a copy of: the tenancy agreement; the signed *Mutual Agreement to End a Tenancy*; the receipt for payment of \$300.00 on March 5, 2019; and, the registered mail receipt.

Analysis

Section 55 of the Act provides for circumstances when an Order of Possession may be requested and provided to a landlord, including:

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

...

(d) **the landlord and tenant have agreed in writing that the tenancy is ended.**

In this case, the landlord seeks an Order of Possession under section 55(2)(d) of the Act. The landlord has provided evidence that has satisfied me that parties agreed in writing to end the tenancy effective on February 28, 2019. Accordingly, I find the landlord is entitled to an Order of Possession.

Considering the landlord has not received any monies from the tenant since March 5, 2019 when a partial payment was made toward use and occupancy of the rental unit for March 2019 and the date of this decision, I find it is appropriate to provide the landlord

with an Order of Possession as soon as possible, as requested. Provided to the landlord with this decision is an Order of Possession effective two (2) days after service.

I award the landlord recovery of the \$100.00 filing fee paid for this application from the tenant. I authorize the landlord to satisfy this award by deducting \$100.00 from the tenant's security deposit.

Conclusion

The landlord is provided an Order of Possession effective two (2) days after service.

The landlord is authorized to deduct \$100.00 from the tenant's security deposit for recovery of the filing fee paid for this application.

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 25, 2019

Residential Tenancy Branch