



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

For the tenants – MT, CNR

For the landlord - OPR

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenants and one brought by the landlord. Both files were heard together. The landlord seeks an Order of Possession for Unpaid rent. The tenants have requested for more time to file their application and request that the landlords 10 Day Notice to End Tenancy for unpaid rent is cancelled.

Both parties served the other party with a copy of the Application and Notice of Hearing. I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing. The landlord appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form.

There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act* and despite making an application for Dispute Resolution. The hearing started at 11:00 a.m. as scheduled, however by 11:10 a.m., the tenants had not dialled into the conference call. As there has been no hearing into the merits of the tenants' application, it is dismissed without leave to reapply and the hearing proceeded with the landlords' application.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

- Was there any outstanding rent owed to the landlord by the tenants at the time the 10-Day Notice was issued and served?
- Is the landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

This month to month tenancy started on June 01, 2009. The tenants pay a monthly rent of \$1,550.00 which is due on the 1st of each month. The tenants paid a security deposit of \$775.00 on May 29, 2009.

On September 29, 2009 the landlord served the tenants with a Two Month Notice to End Tenancy for the landlords' use of the property. This Notice indicated that the tenants should vacate the rental property on December 01, 2009. There is no evidence that the tenants disputed this notice.

The tenants did not pay their rent when it was due on October 01, 2009 and the landlord served them with a 10 Day Notice to End Tenancy on October 02, 2009. The Notice states that the tenants had five days to pay the outstanding rent or dispute the notice or the tenancy would end on October 15, 2009. The tenants paid \$1,000.00 on October 02, 2009 which was accepted by the landlord for use and occupancy only. The tenants paid the remainder of the outstanding rent of \$550.00 on October 09, 2009 this was also accepted for use and occupancy only.

The landlord filed an application for an Order of Possession of October 13, 2009. The landlord also attempted to reach an agreement with the tenants that they could stay in the rental property until November 15, 2009 without any further rent due for November if

they agreed to move out on that day. The tenants refused to sign this agreement as they wanted the landlord to issue new rent receipts for October without the term “for use and occupancy only”.

The landlord testifies that she believes the tenants are now in the process of moving out and have agreed to vacate the property by November 29, 2009 when a final condition inspection will be carried out. However, the landlord still requests an Order of Possession in the event the tenants have not moved out on the agreed day.

Analysis

The tenants did not appear at the hearing, despite having been sent a Notice of the hearing. I find that the landlord applied for Dispute Resolution two days early as the 10 Day Notice to End Tenancy would not have come into effect until October 15, 2009. However, as the tenants remain in the rental unit as of today's date I will allow the landlords application.

I accept that the tenants were served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants had until October 07, 2009 to pay all the outstanding rent or apply to dispute the Notice to End Tenancy. The tenants paid part of the rent on October 02, 2009 and this was accepted and documented by the landlord for ‘use and occupancy only’ and the balance of rent on October 09, 2009. Therefore, the 10 Day Notice to End Tenancy remains in effect.



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Based on the foregoing, I find that the tenants are conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an order of possession.

Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service. This order must be served on the tenants and may be filed in the Supreme Court and enforced as an order of that Court.

As the tenants have not appeared at today's hearing to present the merits of their application, their application is dismissed without leave to reapply

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: November 24, 2009.

Dispute Resolution Officer